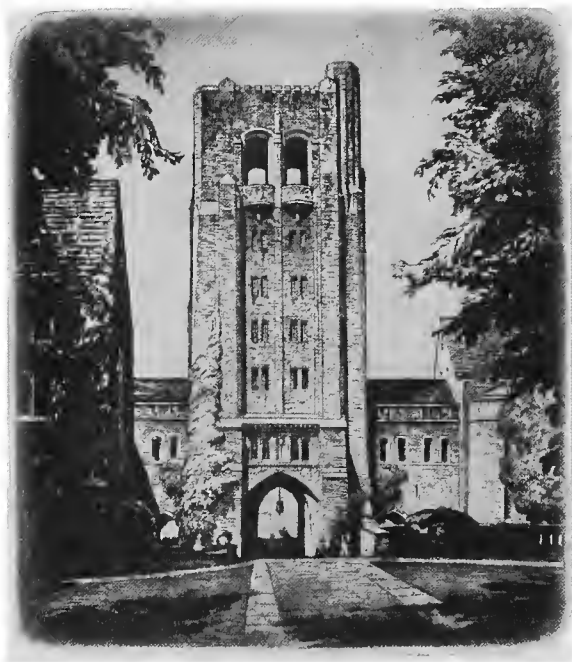




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THE LAW

—OF—

STRIKES, LOCKOUTS

—AND—

LABOR ORGANIZATIONS.

—BY—

THOMAS S. COGLEY,

A MEMBER OF THE BAR OF THE DISTRICT OF COLUMBIA
AND AUTHOR OF COGLEY'S DIGEST.

WASHINGTON, D. C.
W. H. LOWDERMILK & CO.
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DEDICATORY.

In common with all other law students, who have had both the honor and privilege of hearing the law lectures of THOMAS M. COOLEY, at the University of Michigan, I early contracted the reverence for him that a son has for his father, and stood in awe of his legal learning. I am happy that I can place the testimonial of my profound respect for him in a permanent form, but at the same time am chagrined that the bearer of it is not worthy of so great a lawyer and so distinguished a citizen. It is, therefore, with trepidation that I lay this unpretentious contribution to law literature at the feet of the great jurist.

THOMAS S. COGLEY.

PREFACE.

An apology for writing a book always seems to be affectation. No one ever writes unless he wishes to and desires to see his productions in print. Consideration for the feelings of book-buyers does not enter into the calculations of the writer in submitting for their favorable consideration his last and of course greatest literary performance. But assuming that custom requires some exhibition of shrinking modesty on the part of an author, the fact that there is no other work in existence on the same subject should be accepted by the patient and long suffering book-buyer as fully complying with expectation in that direction.

This is the only lawbook in the world specially devoted to the subject of which it treats. Only fragmentary references are to be found in other works.

In England, Lord Erle wrote a small pamphlet of ninety-four pages on the subject of trades-union, in which reference is made to some of the leading cases on strikes, but it would be absurd to call it a lawbook, or to assert that it would be of any particular value to the practicing lawyer. Judge Erle was appointed a member of a commission to examine the laws relating to labor and trades-union, and to report such modifications to the law as might be deemed advisable. In prosecuting his investigations he came into possession of matter not strictly within the scope of his instructions, and which could not be embodied in a report. Not desiring to lose the benefit of his labor and research he

incorporated the results of both in his pamphlet. There is another small pamphlet known as "Davis' Labor Laws," which is a mere essay and of no practical value. Mr. Wright published a work called "The Law of Criminal Conspiracies and Agreements," which is a consideration of conspiracies generally, and makes brief reference to strikes.

In 1887, Mr. Carson of Philadelphia set out to revise Wright on criminal conspiracies, but his material being so voluminous and important he concluded to publish it in a separate book, and did so by making it an addenda to Wright. He devotes considerable space to strikes and boycotts. But since 1887 many important cases have been decided both in England and in this country, presenting subjects not considered by either Wright or Carson.

Judge Ray of New York, in 1892, published his work on Contractual Limitations, which briefly mentions strikes and boycotts, but all of the cases on those subjects were not referred to and it was not within the scope of his work to do so.

These are the only books, except the reports, in which any considerable reference to the subjects of this work is made.

Of late some important decisions have been made by the Federal Courts, fixing the status under the interstate commerce law of railroad strikers.

The decision of the Supreme Court of the United States on the appeal of Lennon from the order of Judge Rix, remanding him to the custody of the United States Marshal on his application for *habeas corpus* for release from imprisonment for not paying the fine assessed against him for disobeying an injunction, was rendered in time to enable it being put in its proper place to prevent delay in publication. The

case therefore appears here in advance of its publication in the regular series of reports.

It would naturally seem that a work containing all the law, both case and statutory, on the subject would be of practical value to the profession. The effort and intention have been to produce such a work. How successfully it has been accomplished it is for the profession to say.

The subject is a peculiar one in every way. Although as old as the human race, yet there are few adjudicated cases, compared with the frequency of strikes; and they are ambushed in obscure subjects where a person in a hurry would not think of looking for them, and are stumbled on accidentally. Not a single case has been found indexed or digested under the head of strikes.*

There is some conflict in the cases, which has given judges considerable trouble, and which has made it difficult to decide on the best way of presenting the subject. Naturally, it is to be considered from two stand points: first, criminal liability; second, civil. Criminally, the offense of strikes and their ramifications, boycotts, picketing, blacklisting, &c., take the form of conspiracies, while civilly the matter is easily disposed of, the parties concerned being liable in tort for damages. These two points being settled the next logical method of treatment appears to be historically. This leads to a consideration of conspiracies at common law and under statutes. The common law doctrine has been gone into very fully in the first chapter, the purpose being to trace the common law definition of conspiracy from the first reported case. In doing so the cases have been given in full, so the reader can judge for himself. The legal war growing out of this one subject has been fierce, and

it is important that all the obtainable data to enable one to arrive at a satisfactory conclusion should be placed at the disposal of the reader.

In 1824 and 1825 Parliament enacted some important laws on the subject of conspiracy relating to strikes, repealing the common law rule. That date has been fixed upon as the dividing line between the old and the new law. Those statutes and the decisions under them constitute what has been denominated for convenience, in chapter two, *Modern Doctrine*. But it must not be assumed from this arrangement that the law detailed in chapter one is wholly obsolete. All the cases cited in that chapter, particularly those relating to intimidation, &c., contain sound law, except so far as changes have been made by statute, or earlier cases overruled. •

The comparatively small number of cases has made it possible to carry out the plan of giving very full extracts from them and in some instances giving them in full. That, it is thought, will give the work a value as a hand-book of authorities. Many of the cases are out of print and cannot be procured, and most of those in England are difficult of access to a very large majority of the lawyers in this country.

The publisher changed in the proof the letter y to i in the word Taylors in the table of cases, evidently thinking it an error in spelling; but such is not the fact. It is spelled Taylors in the report and should be so spelled here. It was the ancient way of spelling the word. This explanation is given, as there might be others who may think it error in spelling.

Without further comment or explanation this work is submitted to the legal profession.

THOMAS S. COGLEY.

December 18, 1893.

Washington, D. C.

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ERRATA.

Page 31, in note, first word second line put w instead of u.

Page 79, seventh line from the bottom, first word change e in, last syllable to o, so as to read combination..

Page 84, ninth line from bottom, change "on" to of.

Page 105, seventeenth line from bottom, in the word tyranny strike out one r and add n.

Page 299, in note, change e to o, so as to read Connor.

Page 343, note 2, put u instead of i in second word, so as to read Huddlesfield.

Page 345, note 2, put o instead of e, so as to read Connol.

Page 347, notes 2 and 3, change the name Corner to Comer.

CHAPTER I.

STRIKES AS CONSPIRACIES—EARLY DOCTRINE.

- § 1. Definition of Strikes.
- 2. Definition of Lockout.
- 3. Strikes as Conspiracies.
- 4. Early American Cases.
- 5. Early English Statutes.

§ 1. Definitions of Strikes.

A strike has been defined to be “a combination among laborers, or those employed by others, to compel an increase of wages, a change in the hours of labor, a change in the manner of conducting the business of the principal, or to enforce some particular policy in the character or number of the men employed or the like.¹ Also as “the act of a body of workmen employed by the same master, in stopping work altogether at a prearranged time, and refusing to continue until higher wages, or shorter time, or some other concession is granted to them by the employer.”² Or “a combined effort by workmen to obtain higher wages or other concessions from their employers, by stopping work at a preconcerted time.”³ Or “a strike is properly defined as ‘a simultaneous cessation of work on the part of the workmen,’ and its legality or illegality must depend upon the means by which it is enforced

¹Anderson's Law Dic., Del. Lackawana & Western R. Co. v. Rowns, 58 N. Y., 582.

²Black's Law Dic.

³Bouvier's Law Dic., 15th Ed., 1888.

and on its objects.”¹ “To press a claim or demand by coercive or threatening action of some kind; in common usage, to quit work along with others, in order to compel an employer to accede to some demand, as for increase of pay, or to protest against something, as a reduction of wages; as to strike for higher pay or shorter hours of work.”² Any of these definitions are good, but the first one as given by Anderson is the most satisfactory, as it comes the nearest covering all phases of a strike, and is almost word for word the definition given in the case cited in note 1. While an unlawful strike must necessarily be a conspiracy, yet unlike most conspiracies it requires more than two persons to constitute a strike, unless two constituted the entire number employed and could coerce the employer. Coercion in some form or other must result, or be intended to result, or there is no strike. It is well to make the distinction at the outset between a strike and simply quitting work. While a strike is quitting work, yet it is accompanied with the distinguishing feature of being done by prearrangement between many workmen to cease working simultaneously at a given time and for the express purpose of injuring or crippling, in some way, the employer in his business. It could not possibly be a violation of any criminal law now extant for any number of workmen to quit working even simultaneously if there is no intention and nothing is done to interfere with the employer or his business or property, or employes who desire to continue at work, or persons seeking employment. Whether an employe would be civilly liable for quitting the service of his master would depend upon whether by so doing he violated his contract of service.

¹ Ray's Contractual Limitations, 339.

² Century Dic.

If he did not then he would have a perfect right to quit when he pleased. If he violated his contract, then he would simply be liable to any damages that the master would be entitled to. But this subject will be treated at length in another chapter. The expression, "employees have the right to strike," occurs frequently in the reported cases, particularly modern ones, but it is to be considered with caution, for it is evident, even in the cases where it occurs, that the courts do not mean it in the broad sense that the language seems to imply. Therefore, according to our every day experience, the simultaneous cessation of work by employees, to reach the dignity of a strike, must involve a considerable or greater part of the employees, and most frequently all of them. As most, and frequently all, of the workmen where strikes take place are under the domination of some one or more of the various labor organizations or unions, and strike simply because they are ordered to by their unions, a strike involves all of the employees. One of the purposes of a strike is to over-awe or intimidate by mere force of numbers. Therefore it is difficult to see how two, three or half a dozen individuals could over-awe any body or prevent an employer from carrying on his business. It is evident from the nature of things that the purpose of a strike is to extort, by force of numbers, intimidation and coercion, and by crippling his business by quitting at the busiest season and preventing other employees from taking their places, some concession from the master. If strikers carry their point, they must of necessity prevent their places from being filled by other workmen, else a strike would simply amount to an exchange of employees. As the laws of civilized governments do not countenance the deprivation of any number or

class of citizens from earning their living by engaging in any lawful occupation or business that they please, but on the contrary encourage them to do so, it follows as an inevitable conclusion that strikes, as we know them at the present day, are wholly illegal. According to the economy of nature, every human being must work or engage in some business or calling, and it would be a monstrous proposition that certain classes of men, in order to get a monopoly of a particular line of business, should forcibly prevent others from engaging in the same business, or compel by fear of personal injury or utter destruction of business or of property another to do an act against his free will. If that should become the universal rule, then the world would be under a greater despotism than it has yet known.

§ 2. Definition of Lockout.

Considering the fact that the word "lockout" is as often spoken as "strike," and always in connection with one, it seems singular that no law dictionary contains the word or definition of it. The only guide that we have in formulating a definition of the word is that given in the Century Dictionary, as follows: "the act of excluding a person or persons from a place by locking it up. The condition of such exclusion. Specifically (a) The exclusion of a teacher by his pupils, in sport or rebellion, or of pupils by their teacher, by way of discipline. (b) A refusal on the part of an employer to furnish work to his employes in a body, intended as a means of coercion. When capitalists refuse to grant so large a proportion of of the product for labor as the laborers have heretofore received, and will combine to supply capital on any terms which laborers will accept, the result is a lock-out."

In the Supplement to Webster's Dictionary, edition 1890, the following is given: "Lockout, a suspension of work on the part of employers; corresponding to a strike on the part of the employed." The word lockout is suggestive of closing and locking doors and gates for the purpose of excluding entry. It is evident that this could be done both by employers and employes, and as a matter of fact is done by both. The necessity for locking the doors to prevent the invasion of shops and factories by mobs and the destruction of property, and to protect employes, was early developed. After the adoption of the system of picketing by strikers, they, the strikers, became, in a sense, the parties who did the locking out by preventing employes desiring to continue at work from entering shops or manufactories and also excluding those seeking employment. Under such circumstances, the doors would not only substantially, but in fact be locked to exclude the mob for the purpose above named. Early experience taught large manufacturers the necessity of surrounding their establishments with high walls or fences as a protection not only against strikers but also against petty trespassers and pilferers. These walls have gates for the admission, not only of persons, but also of wagons and teams. Whenever there is a strike these gates are securely locked. But it sometimes happens that employers discharge their employes and lock the doors or gates upon them to prevent their return and committing trespasses. It will therefore be seen that every strike includes a lockout, and, according to almost universal modern experience, every lockout a strike. And it is equally evident that a lockout may be the act of either the employer or employes. A lockout may therefore be defined to be the act of an employer in excluding from

his premises, or locking his doors and gates on, employes discharged from his service for any reason that to him seems proper, to prevent their return and committing trespasses upon persons or property, or, the acts of striking employes, who, by assembling in large numbers about the places of business of employers and by threats or some of the various means of coercion, bar the entrance to or departure from their places of employment of employes continuing in the service of their masters and prevent the entrance of persons seeking employment, and, by such acts, compel employers to lock their doors and gates to prevent trespasses and depredations by strikers and mobs. So much of lockouts as result from the acts *per se* of strikers will be considered in connection with strikes and as parts thereof, but so far as they are the acts solely of employers will be reserved for a separate chapter.

§ 3. Strikes as Conspiracies.

Considering the frequency of strikes, there are but few adjudicated cases upon the subject, and those cases mostly have been for criminal conspiracy. There has been a sufficient reason for this in the fact that the impecuniosity of strikers has always been a shield of protection to them against actions for damages, although there is no question but that they would be civilly liable for their acts even when criminal proceedings cannot be sustained. As a rule, both strikers and employers become exhausted by a determined strike, the former by starvation and the latter by great loss to their business, and both sides are willing to come to terms of settlement. And it also frequently happens that employers, to avoid the disagreeable consequences of a strike, yield to the demands of their employes and thus prevent or speedily put an

end to it. But so outrageously and brutally have some strikes been conducted, that the public authorities have been compelled to interfere, and when they have the prosecutions have usually been for conspiracy. The first reported case arose in England, and, of course, was decided according to the English doctrine as it then existed. At common law it was an indictable conspiracy for two or more persons to agree and combine together to do an unlawful act, or to do a lawful act in an unlawful manner.¹ It was the conspiracy or confederating together that was odious in the eye of the law. Therefore, in the case of *Rex v. The Journey-men Tailors of Cambridge*,² while it was conceded it was no offense for employes to quit work, yet the combination or confederacy to raise wages by quitting work simultaneously was a conspiracy, and, as such, punishable. It was held that "a conspiracy of any kind is illegal, although the matter about which they conspire might have been lawful for them, or any of them, to do, if they had not conspired to do it, as appears in the case of the *Tubwomen v. the Brewers of London*."³ This doctrine was followed in several sub-

¹ *People v. Trequier*, 1 *Wheeler's Crim. Cases*, 142; 3 *Chitty's Crim. Law*, 905, 1139, 927, 1163; *King v. Mawbey*, 6 *Term Rep.* 636; *Commonwealth v. Hunt*, 4 *Metc.* 111; *Wharton's Crim. Law* (9th Ed.) § 1337; 2 *Bishop Crim. Law* (3d Ed.) § 176, *Commonwealth v. Haines*, 15 *Phila.* 356.

² *Rex v. The Journeymen Tailors of Cambridge*, 8 *Modern*, 10.

³ There is no such case as the *Tubwomen v. The Brewers of London*. It is thought to be the case of the *King v. Starling*, 1 *Siderfin*, 174, 1 *Kebles*, 650, 655, and 1 *Levinz*, 125; which was an indictment for conspiring to depauperate the farmers of the excise, which would render them incapable of paying the King his revenue. It is not known how the case came to be called by the name of the *Tubwomen v. the Brewers of London*, but is supposed to have been the popular local name given it from the fact that the conspiracy was to stop brewing a certain cheap beer, which, on account of its cheapness, was the favorite and in fact only beverage that the poor

sequent cases in England,¹ and was the early rule in this country.² But not only the doctrine of the case, but the volume of reports in which the case is reported have been savagely assailed both in England and the United States.³

Before considering the adverse criticisms upon this case it might be well to have a clear idea of it. Several journeymen tailors in the town of Cambridge were indicted and convicted of conspiring to increase their wages. There was a motion in arrest of judgment for mere matters of form in the indictment, which has no bearing upon the point under consideration. But the objection was raised that it did not appear upon the face of the indictment that a crime had been committed, but that it was only charged a conspiracy and refusal to work at the present rate of wages per day, when in fact under 5 Eliz. C., 4, they were not obliged to work by the day but by the year. To which it was replied that the refusal to work was not the crime, but the conspiracy to raise the wages.

of London and particularly the poor workingwomen could afford, and the failure to brew it caused great commotion among that class of people.

¹ *Rex v. Hammond & Webb*, 2 Esp. 719; *Rex v. Salter*, 5 Esp. 125; *Rex v. Bykerdike*, 1 Moody & Robinson, 179; *King v. Eccles*, 1 Leach, 274, 3 Doug. 337; *Rex v. Ferguson*, 2 Starkie, 431; *Reg. v. Bunn*, 12 Cox C. C. 316; *Reg. v. Druitt*, 10 Cox C. C. 592; *Rex v. Mawbey*, 6 Term. Rep. 619.

² *People v. Trequier et al.* 1 Wheeler's Crim. Cases (N. Y.), 142; *People v. Fisher*, 14 Wend. (N. Y.) 1; *People v. Melvin et al.* 2 Wheeler's Crim. Cases (N. Y.) 262, or *Journeymen Cordwainers of the city of New York*, Yates Select Cases, 111; *Philadelphia Journeymen Tailors*, pamphlet printed at Phila. 1827, scarce; *Commonwealth v. Carlisle*, Brightly's Rep. (Pa.) 36; *State v. Donaldson*, 32 N. J. L. 151; *Journeymen Cordwainers of Pittsburgh*, pamphlet; *Commonwealth v. Hunt*, 4 Metc. (Mass.), 111.

³ *The Master Stevedores Asso. v. Walsh*, 2 Daly (N. Y.) 1; *Rex v. Williams*, 1 Burrows (Eng.), 386; *Rex v. Harrison*, 3d ed., 13, 26; *Wallace's Common Law Reporters* (3 ed.), 226.

Then the Court said, "The indictment it is true, sets forth, that the defendants refused to work under the wages which they demanded; but although these might be more than is directed by the statute, yet it is not for the refusing to work but for the conspiring that they are indicted, and a conspiracy of any kind is illegal, although the matter about which they conspire might have been lawful for them to do, if they had not conspired to do it," &c. This is all of the case in which we have any interest. It was decided in 1721, and it certainly does decide that the mere conspiring of the workmen to increase their wages was indictable, and the judgment of conviction was affirmed by an unanimous Court. Stephens¹ says "no case has ever been cited in which any person was, for having combined with others for the raising of wages, convicted of a conspiracy in restraint of trade at common law before the year 1825. There is indeed one case, that of the journeymen tailors of Cambridge 8 Modern 10, which may perhaps be an authority the other way but this appears doubtful."

2. "There are some dicta to the effect that such combinations would be unlawful. The most important of these is the dictum of Grose, J., in *R. v. Mawbey*, 6 T. R., 619: 'In many cases an agreement to do a certain thing has been considered as the subject of an indictment for a conspiracy, though the same act, if done separately by each individual without any agreement among themselves, would not have been illegal. As in the case of journeymen conspiring to raise their wages; each may insist on raising his wages if he can, but if several meet for the same purpose it is illegal, and the parties may be indicted for a conspiracy.' This dictum is an illus-

¹ 3 Stephen's Hist. Crim. Law of England, 209 par 1, 2.

tration not necessary to the decision of *R. v. Mawbey*, and founded as it seems to me upon the case of the Cambridge tailors."

In commenting upon the case of the journeymen Tailors of Cambridge, the Court, in the case of the Master Stevedore's Association *v. Walsh*,¹ says, "it is not, nor has it ever been, a rule of the common law that any mutual agreement among journeymen for the purpose of raising their wages, is an indictable offense, or that they are guilty of a conspiracy if, by preconcert and arrangement, they refuse to work unless they receive an advance of wages. The Chief Justice (in *People v. Fisher*, 14 Wend. 9), admitted that he had found but few adjudications upon the subject, and that the offense of conspiracy had been left in greater uncertainty by the common law than most offenses. He remarked that precedents in the absence of adjudications were some evidence of what the law is, and he referred to several, but none of them warrant the conclusion that they were founded upon any rule of the common law. He referred to but two adjudged cases: *The King v. The Journeymen Tailors of Cambridge* 8 Modern, 11, and *The Tubwomen v. The Brewers of London*, the last of which cases, he says, has been cited as sound law by all subsequent criminal writers. There is no report of any case under such name of the *Tubwomen v. The Brewers of London*. It is merely mentioned by name in the case first above cited, as authority for the proposition that a conspiracy of any kind is illegal, though the matter about which the parties conspire might have been lawful for them, or any of them, to do if they had not conspired to do it. The first volume of *Modern Reports*, in which reference is found, is one of the least reliable of the

¹ *The Master Stevedore's Association v. Walsh*, 2 Daly, (N. Y.) 1.

English reports, being full of inaccuracies, blunders and misstatements. Burrows, in his reports, speaks of it as 'a miserable, bad book,' and says that on being cited, the Court of Kings Bench treated it with the contempt that it deserved (1 Burr. 3, 86, 3 id. 1326); and by an excellent authority upon the books of reports and their reporters, it is characterized by the epithet of 'execrable,' (Wallace's Common Law Reporters, 3 ed. p. 226). The title 'The Tubwomen v. The Brewers of London,' is undoubtedly a mistake, and it has been conjectured that the case referred to is the King v. Starling and others, reported in 1 Lev. 125; 1 Sid. 274; 1 Keb. 350 (see the conjectures of Mr. Emmett and of Mr. Sampson respecting it, in Yates Select Cases, pp. 164, 211, 212). I entertain no doubt but that this conjecture is correct, and a brief statement of that case will suffice to show what was determined by it. The defendants—Brewers of London—were found guilty of a conspiracy for agreeing that they would brew no small beer—which was the drink of the poor—for a certain length of time, nor ale, except at a certain price, with the intent of moving the common people to pull down the excise-house and to bring the excisemen into public odium, that they might be imprisoned and disabled from paying their rent to the government, to the diminution of the revenue; which was a very clear case of conspiracy, the design being to impair the public revenue, to inflict pecuniary injury upon all the excisemen, and to stir up a public tumult. Assuming it to be as I have no doubt it is, the case referred to under the suppositious title of the Tubwomen v. Brewers of London, it would have been more correct to have said that it warrants the conclusion that though the brewers, or any of them, had the right to cease brewing or to raise the price of their

ale, it was unlawful for them to combine to do so for such an object as the one above stated. The case is an authority simply for a familiar principle of the criminal law, that it is a conspiracy to combine to do a lawful act for an unlawful purpose, or by unlawful means.

“As respects the remaining case (*The King v. The Journeymen Tailors of Cambridge*), it is also found in this discredited volume of reports, in further condemnation of which I may cite the remark of an eminent English judge, Justice Wilmot, that, ‘nine cases out of ten in this book are totally mistaken.’ (*The King v. Harris*, 7 Term R. 238). But even the case, as reported there, affords no ground for the inference that there was any such rule at the common law as Chief Justice Savage supposed. In 1721, when the case was decided, there were acts of Parliament regulating the rates of wages. The defendants, according to the report, were indicted for refusing to work unless they received higher rates than the statute allowed. And, as far as can be gathered from the confused statement of the reporter, the conviction was held good, because they had conspired to raise their wages beyond what the law permitted. These early English statutes, regulating the price of labor, being wholly inappreciable to us in our colonial condition, were never in force in this country, and formed no part of the law of the Colony of New York at the adoption of our State Constitution in 1777. This decision, therefore, was limited to England, deriving its whole effect from the English statute, the provisions of which it was held the defendants had conspired to defeat. It has never been decided in England or America that it was unlawful for journeymen to agree that they would not work, except for

certain wages, or for master workmen to agree that they would not employ any journeymen except at certain rates, (*Com. v. Carlisle*, 1 Hall's Journal of Jurisprudence for 1822, p. 225)."

Combinations free from the object of coercion are lawful. The court in continuing says, "But it may be in their power to secure by associated effort what it would not be possible for any one of them to accomplish alone; and that they should have the right to associate together for mutual protection of their individual interest is so plain, that it is singular that it should ever have been questioned. Journeymen may be as well acquainted as their employers with the causes which affect the price of labor, and in this country are generally well informed in such matters. They may be quite as well able to judge whether the ordinary profits of employers justify a reduction or an increase in the rate of wages. Why, then, should they not have the right to come together to consider the condition of the branch of industry in which they are operatives, to impart information to each other, to exchange their views, and discuss in a body a matter in which they are so deeply interested? Merchants meet daily upon 'change,' that they may be thoroughly informed upon all matters relating to the traffic in which they are engaged; and why should not journeymen meet together to consider upon a subject so important to them as the general rate of wages. The exact sum which should be required for a day's wages may be fluctuating and uncertain, through the operation of other causes than those of demand and supply, such as the instability of the currency, by which the value of the paper representations of a dollar changes as the circulating medium is increased or diminished. These are causes affecting

the price of their labor; and if they come together, and as the result of their deliberations conclude that a certain rate would be just and reasonable, and that they will not work for less, it would be the height of injustice to call such an act a crime, by declaring that it was, in the language of the statute, unlawfully conspiring to commit an act injurious to trade or commerce, for which each of them may be indicted and punished.

“It is otherwise, however, where organizations are formed to intimidate employers, or to coerce other journeymen; and it matters little what are the measures adopted, if the object of them is to interfere with the rights or control the free action of others. It was held, under the English statute I have referred to, that it did not authorize workmen to combine for the purpose of dictating to a master whom he should employ (*Rex v. Bykerdike*, 1 M. & Rob. 179); and the several convictions in this country have been in cases where coercive measures have been resorted to, either to prevent master workmen from employing journeymen except at certain rates, or to intimidate journeymen from engaging below such rates, or to compel them to become members of the combination. Every man has the right to fix the price of his own labor—to work for whom he pleases—and for any sum he thinks proper; and every master workman has equally the right to determine for himself whom he will employ, and what wages he will pay. Any attempt by force, threat, intimidation, or other coercive means, to control a man in the fair and lawful exercise of these rights is, therefore, an act of oppression, and any combination for such a purpose is a conspiracy.

“It may, therefore, be laid down as the result of this examination, that it is lawful for any number of

journeymen or master workmen to agree, on the one part that they will not work below certain rates, or on the other that they will not pay above certain prices; but any association or combination for the purpose of compelling journeymen or employers to conform to any rule, regulation or agreement fixing the rate of wages, to which they are not parties, by the imposition of penalties, by agreeing to quit the services of any employer who employs a journeyman below certain rates, unless the journeyman pays the penalty imposed by the combination, or by menaces, threats, or intimidation, violence, or other unlawful means, is a conspiracy for which the parties entering into it may be indicted."

Special prominence is given to the Master Steve-dore's case from the fact that it leads the revolt in this country against the English rule, that a mere conspiracy among workmen to quit simultaneously was an indictable offense.

In the case of *Rex v. Williams*, 1 Burrows, 386, after the citation of a case in 8 Modern, there is a reference to a marginal note by the reporter in brackets as follows, [a miserably bad book, entitled "*Modern cases in law and equity*."] But there is not a word uttered by the Court or counsel, if Burrows faithfully reported the case, in condemnation of the volume.

In *Rex v. Harrison*, 3 Burrows, 1326, there is also a reference to the following note of the reporter, "N. B. Wannel's case being here cited from 8 Mod., 267. The Court treated that book with the contempt it deserves; and they all agreed that the case was wrongly stated there. (I mean the old edition of that book.)" The qualification in the parenthesis is significant. It implies that other editions, probably

corrected ones, were all right. There is not a word in the opinion of the Court unfavorable to the volume.

But in the case of the *King v. Harris*, 7 T. R., 239, the objection to the volume takes a more tangible shape in the opinion of the Court: "This matter also came before the Court in Fr. 9 Geo. 1, on a conviction on the Stat. Geo. 1 C., 48; and there the conviction was only *ideo consideratum est quod convictus est*, &c.; and though that point was not there decided, it appears to have been the sense of the Court that the conviction was bad for that reason. That case is reported in Modern cases in Law and Equity; (*R. v. Ashton*, 8 Mod., 175) but it is totally mistaken there, as indeed are nine cases out of ten in that book."

It, therefore, becomes important to know whether the case, as reported, is correct and also the doctrine of law laid down in it. That each reader may judge for himself, the cases, the *King v. the Journeymen Tailors of Cambridge* and the *King v. Sterling or Starling* are given in full in the notes.¹ While it is

¹ The following case is copied from the fifth corrected edition, by Thomas Leach, Esq., of the Middle Temple, Barrister at Law:

Rex v. Journeymen Tailors of Cambridge, 8 Modern, 10, Monday, November 6, 1721.

One Wise, and several other journeymen tailors, of or in the town of Cambridge, were indicted for a conspiracy among themselves to raise their wages; and were found guilty.

It was moved in arrest of judgment, upon several errors in the record,

FIRST. That the defendants, having the addition of "yeomen," are notwithstanding, charged with a conspiracy not to work as "journeymen tailors," which is a repugnancy.

It was answered, that "yeomen is a good addition, for a yeoman may be a tailor."

The Court held that there was no inconsistency between the addition of "yeoman" and the addition of "Taylor."

hardly worth the trouble, yet as the opinion of Wallace as to 8 Modern is referred to in the Master Stevedores' case, it may be as well to present all the

SECONDLY. The caption is not good, being "ad general quartial sess. pacis, &c," omitting "domini regis" after "pacis." This exception has been several times held fatal, and is very different from the cases where they are omitted after the words *just dicit domini regis ad pac. in com. præd, conservand, affigr.*" In Hilary Term in the first year of Queen Ann, and in Hilary Term in the eleventh year of Queen Ann, two indictments were quashed for this exception.

It was answered that this objection has been often overruled, for it must be intended the King's peace, and that the case in *Ventris* has been denied for law.

The Court was of the same opinion, and said that of late years this objection had never prevailed.

THIRDLY. No crime appears upon the face of this indictment, for it only charges them with a conspiracy and refusal to work at so much *per diem*, whereas they are not obliged to work at all by the day, but by the year, by 5 Eliz. c. 4.

It was answered, that the refusal to work was not the crime, but the conspiracy to raise the wages.

THE COURT: The indictment, it is true, sets forth that the defendants refused to work under the wages which they demanded; but although these might be more than is directed by the statute, yet it is not for the refusing to work, but for conspiring that they are indicted, and a conspiracy of any kind is illegal, although the matter about which they conspire might have been lawful for them, or any of them, to do, if they had not conspired to do it, as appears in the case of the *Tubwomen v. the Brewers of London*.

FOURTHLY. That this fact being laid in the town of Cambridge, it did not appear by the record in what county Cambridge was, which it ought to do, because there are other towns of that name in England, viz. in Gloucestershire; and so it is a mist-trial, for there is no more reason to award the venire to the sheriff of Cambridge than any other county. The *venire facias* is awarded to the sheriff of the county of Cambridge, commanding him to summon a jury "*de vicineto villæ Cant.*" In the margin of the indictment it is *villa de C.*; in the indictment the venire is alleged only *assud villam de C.*; and although the *certiorari* to remove it is directed "*just. domini regis de villa C. in com. nostro C.*" this error is not helped by naming the county in the *certiorari* to remove the indictment, because that writ is only an order of this court. Neither shall it be intended that Cambridge is in the county of Cambridge, because

objections to that volume. In his work on the common law reporters, Wallace bases his judgment on that of Mr. William Green of Virginia. He says,

this is a criminal case, and intendments are never allowed in prosecutions of this nature.

It was answered, that the fact being laid in the town of Cambridge it shall be intended that the town is within the county of Cambridge, for which Long's Case is an authority in point.

THE COURT. If a *venire facias* be directed to the sheriff of Cambridge to return a jury, and he returns one *de viceneto Cantabrigiæ*, it is good; for Cambridge being mentioned in several acts of Parliament, the Court must take notice of such acts, and upon such a return will intend that Cambridge is in the county of Cambridge. In the case of Withers *v.* Warner, in Hilary Term, in the sixth year of George the First, we took judicial notice that "London" and "the city of London" are all one. The certiorari is directed, "To the justices of our lord the King of the town of Cambridge, in our county of Cambridge," and returned by the justices of the vill in the county of Cambridge; so that it will be a very foreign intendment to suppose the vill to be out of the county.

FIFTHLY. This indictment ought to conclude *contra formam statuti*; for by the late statute 7 Geo. I. C. 13, journeymen taylors are prohibited to enter into any contract or agreement for advancing their wages, &c. And the statute of 2 and 3 Edw. 6, c. 15, makes such persons criminal.

It was answered, that the omission in not concluding this indictment *contra formam statuti* is not material, because it is for a conspiracy, which is an offense at common law. It is true, the indictment sets forth, that the defendants refused to work under such rates, which were more than enjoined by statute, for that is only two shillings a day; but yet these words will not bring the offense, for which the defendants are indicted, to be within the statute, because it is not the denial to work except for more wages than is allowed by the statute, but it is for a conspiracy to raise their wages, for which these defendants are indicted. It is true, it does not appear by the record that the wages demanded were excessive; but that is not material, because it may be given in evidence.

THE COURT. This indictment need not conclude *contra formam statuti*, because it is for a conspiracy, which is an offense at common law.

So the judgment was confirmed by the whole Court, *quod capiantur*.

In the volume from which the above case was copied is the following:

"the 3d, 4th, 5th, and 7th, Modern are but so, so; 8th, and 11th, Modern are execrable; but 1st, 2d, 6th, 9th, 10th, and 12th, Modern deserve a place in the

"PREFACE TO SECOND EDITION."

"The Editor having been favored with a sight of many marginal notes and corrections made soon after this Book was published, by a gentleman then at the Bar, for his own private use, and founded upon contemporary notes of the cases therein contained, and judging from such marginal notes and corrections "that the book must have been exceedingly imperfect and erroneous, has done his best endeavours to supply the defects of the former wretched edition."

There will naturally be doubt whether the editor in speaking of this "wretched edition" meant the first edition of the volume by himself or the original edition entitled "Modern cases in Law and Equity," printed in 1730, the name of the author or editor not appearing. But the inference would seem to be that the editor was referring to the first edition by himself. But it might have been that the second edition referred to was his first edition. It being possible that some lawyers might take that view, the case as found in the original edition is given below. It will be seen that there is a difference in the two reports, but that difference is simply in the arrangement of the points in the case. The real question of law decided is precisely the same in both reports. This volume having run through five editions by Leach, it is not at all unreasonable to assume that the errors, if any, in former editions were discovered and eliminated.

"The King *versus* Journeymen Taylors of Cambridge," Modern Cases in Law and Equity, 10. [7th year Geo. 1, printed in 1730.]

"One Wise and several other Journeymen Taylors, of or in the town of Cambridge, were indicted for a conspiracy among themselves to raise their wages; and being found guilty, they now by their counsel, moved in arrest of judgment upon several errors in the record

(1.) First, it was objected that this fact being laid in the town of Cambridge, it did not appear by the record in what county Cambridge was, which it ought to do, because there are other towns of that name in England.

It was insisted, that the omission of the county was a fatal error in the record, and not to be helped by naming the county in the certiorari to remove this indictment, because that writ is only an order of this Court.

Neither shall it be intended that Cambridge is in the County of Cambridge, because this is a criminal case, and indictments are never allowed in prosecutions of that nature.

better class of the old Reports; especially the 2d, 6th, and 12th." There is no reason assigned for this impeachment of 8 Modern, and the cases in it con-

(2.) This indictment ought to conclude *Contra formam Statuti*, for by a late statute Anno 7 Georgii journeymen taylors are prohibited to enter into any contract or agreement, for advancing their wages &c.

These objections were thus answered.

First, that the fact being laid in the town of Cambridge, it shall be intended, that the town is within the County of Cambridge, for which the authorities in the margin are in point.

[5 Reg. 120 Long's Case Salk. 118.]

Besides, the justices of peace having jurisdiction within the town of Cambridge, it need not be alleged in what county that town lies, because in order to suppose all inferior jurisdictions, this Court will intend their proceedings to be regular and good, if the contrary doth not appear.

(2.) As to the omission in not concluding this indictment *contra formam statuti*, 'tis not material that it should be so concluded, because it was for a conspiracy, which is an offence at common law; 'tis true, this indictment sets forth, that the defendants refused to work under such rates, which were more than enjoined by the statute; for that is only 2 s. *per diem*, but yet these words will not bring the offense for which the defendants were indicted, to be within that statute, because 'tis not the denial to work for more wages than allowed by the statute, but 'tis for a Conspiracy to raise their wages, for which these defendants are indicted; 'tis true, it doth not appear by the record, that the wages demanded were excessive, but that is not material, because it may be given in evidence.

A *venire facias* directed to the Sheriff of Cambridge to return one *de vicineto Cambrigiæ* this is good, for Cambridge being mentioned in several acts of parliament, this Court must take notice of such acts, and upon such a return will intend, that Cambridge is in the County of Cambridge.

And as to the second objection, the Court was of the opinion, that this indictment need not conclude *contra formam statuti*, because it was for a Conspiracy, which is an offense at common law; 'tis true this indictment set forth that the defendants denied to work under such wages as they demanded; but tho' this might be more than directed by the statute; yet 'tis not for the denial, &c. but for the conspiracy they were indicted; and a Conspiracy of any kind is illegal, tho' the matter about which they conspired might have been lawful for them, or any of them to do; if they had not conspired to

taining important rules of law cannot be put down so easily. After a work passes through five editions it is fair to presume that all serious errors have been

do it; and this appeared in the case of Tubwomen against the Brewers of London. So the judgment was confirmed by the whole court.

"The King *against* Alderman Sterling and Seventeen others," 1 Levinz, 125.

INFORMATION against them, for that they with divers others of the Brewers of London did factiously and unlawfully assemble themselves, and conspire to impoverish the Excisemen, and made orders that no small-beer called gallon-beer should be made for such or so long a time to be sold to the poor, nor no ale but of such a price, with intent to move the common people to pull down the Excise-House, and to impoverish and disable them from paying their rent (being then 118,000 l. per Ann.) to the King; and on not guilty pleaded, they being found guilty on a trial at bar of assembling and consulting to impoverish the Excisemen, and not guilty of the residue. It was moved in arrest of judgment,

1st. That there wanted *Vi and Armis* in the information. But held by the Court it was well enough without it, the information being for plotting and contriving which may be without force.

2dly. That they found guilty only of the conspiring without any act done, for they are found not guilty of the making the orders, &c., and this is only against private men, and not punishable at the King's suit, but by suit by the parties, if they are endamaged thereby.

3dly. That the contriving to impoverish the Excise-men, is uncertain what is meant, and it may be by bringing actions against them for just debts. To the first of which objections it was answered by the King's counsel, That this conspiracy tends to the public, because it concerns the loss of the King's revenue. And as to the second objection, the information says, That it was factiously and unlawfully, and is so found by the jury, which well enough explains what kind of impoverishment is intended, and a conspiring to do an unlawful thing is punishable without any overt-act done, as 9 Co. Rep. Poulter's Case, Moor 788, and the same in the Lord Gray's case and Scrogg and Midwinter's case in the Star-Chamber 1636. And the whole Court gave their opinions, That judgment should be given for the King. And Hyde, Troysden and Kelyuge held, That the bare conspiracy in this case to diminish the King's revenue, without any act done, is finable. 27 Ass. 44. 43 Ass. 20., Wyndham said, That if it was no more than a conspiracy without act done, it was not punishable, but that there was more, *viz.* a confederacy

discovered and corrected. While there is a difference in the report of the case of Journeymen Tailors of Cambridge, in the 5th edition of 8 Modern, and the

and a coadunation [coadunition] by assembling themselves to this purpose, and he cited 45 E. 3., 19. And so all agreed that they should be fined, but not jointly, but separately according to their ability, with a *falois contenementis*; and thereupon they fined Sterling 1000 marks, and the others 300 marks each.

This case under the title of The King v. Starling, 1 Siderfin, 174, is in French.

The following report of it is given as it somewhat differs from that set out above in the wording. The two reports of the case will leave no doubt as to the meaning of the Court in declaring the law of the case.

Mr. Attorney v. Starling, &c., Brewers of London, 1 Keble's Rep., 650, 655.

Weston moved in arrest of judgment in information against them; 1. Because it is factiously, unlawfully and seditiously assembling themselves, &c., not saying *Vi & armis*, or riotose or routese. 2. The defendants were charged for conspiracy to deprive the King of his customs and excise, and to depauperate the fermors, [farmers] which is not material, the defendants being found not guilty of all overt acts alleged in pursuit of the conspiracy, and of hindering the King's revenue, and therefore it cannot be said they factiously, &c., meet together to depauperate the fermors. But per Curiam, the very consultation is an offense, as Poulters case, without any overt act. Mr. Attorney conceded *Vi & armis* not necessary in an information, especially being for conspiracy, which is an act of the will, and not for any personal force, and after verdict especially its good. 2. The very conspiracy to do a lawful act to the prejudice of a third person is enquirable and punishable in B. R. inter les Articles 27, Ass. Also by finding they did not conspire illicite prout per Informat. they do implicitly find their agreement to contribute money to take away the gallon trade, and that they made orders to brew only small beer for three months: also by the Solicitor, as in all the Informations for lessening the King's Revenue; as in that against the Duke of Northumberland for conspiring with Sir J. D. to illegitimate the Lady Anne Dudley, because no process of oitlawry [outlawry] lyeth, it's sufficient for the King, that Mr. Attorney only prayeth *debitum legis processum*. 2. The not guilty *quad omnem aliam materiam* may be supplied in the other acts alleged, as the endeavour to raise mutiny among the people to pull down the office of excise, and the first finding would be sufficient, were the rest contradictory to it. The Court agreed the *Vi & armis* not

original edition, known as "Modern Cases in Law and Equity," yet the difference is simply in the arrangement of the points of the case, there being very

necessary, in that no breach of the peace is complained of, or if it were, as for the death of man, it were needless, by Hyde, especially this complaint being of a crafty wityness. 2. Also the very conspiracy to raise the price of pepper is punishable, or of any other merchandise. And by Twisden, if any of the particular facts, which are but evidence of the design charged, be found, it's sufficient to support the Information and the not finding the particulars (for which by Hyde, there was as great evidence as the general Charge) is not material. But by Windham, all the particulars of making orders and contributing money, are discharged, and not involved in the general finding the conspiracy, *modo & forma*: but whether this be a sufficient crime to meet and consult to depauperate the fermors, 655 pl. 35 (continued on page 655).

Newdigate for the defendants observed, that the point of destroying the fermors of the excise is not found, but only that they did factiously and seditiously assemble and conspire to depauperate the fermors; but it doth not say in the excise, which being incertain, as Moor 302 pl. are not to be made good by any intendment, being penal as well as Indictment: Also conspiracies that are punishable without overt act, must be such as concern the public. Williams' Case, 5 Co., which doth not appear here in this general charge, as Freman's Case, 1 Cr. 579, but an injury to the persons by particular name. Also though the Information might have been good in such general terms, yet not when the particulars thereof are mentioned and found for the defendant, as Meers' Case, Hnb. 173. Wild for the King, it's an inevitable consequence that the King must lose his rent where his fermors are depauperated; and although it may mitigate the matter, that the particulars are not found, yet it remains a great offense, and of public concernment, it appearing by the Information that it was given to the King by Parliament, and by him for 118,000 l. per Annum for three years settled on fermors: Also the Jury have found it seditiously done, which cannot be in cases of private concernment: Also in Oyer and Terminer *de falsis Coadunationibus*, is one article of enquiry. Also by Mr. Attorney, as by 21 H. 7, 39, to assemble his friends for his defense against H. that lay in wait in passage to the market, was held unlawful, although to a lawful end. Also the conspiracy, although an act *ad intra*, yet the communication thereof is an overt act, 27 Ass. 44, Briefe F, 926; Moor 786, Gray's Case, and 756, Stafford's Case, and punishable, although nothing ensue thereon, and the conspiracy is the crime, and thence the visne shall come, as Smith against Thrasher, 2c Jac

little variance in the language, and not a particle of difference in the proposition of law laid down. In that case the question whether a conspiracy to do a

B. R., the other acts are but particular instances of it. Also that such conspiracy must appear by some prosecution, that is to be intended evidentially to the jury, not otherwise: And in Midwinter against Scrogg, in the Star Chamber 1636, in which Sir Edward Tournier was conusee [cognizee], the butchers of London were fined 3000 l. for glutting the markets, to the impoverishing of the federal county fermors, because it was of public concernment and consequence. ADJORNATUR.

"Anonymous, 12 Modern 248 (1698). Leave was granted to file an information against several plate-button makers, for combining by covenants, not to sell under a set rate.

Holt, Chief Justice: It is fit that all confederacies, by those of trade to raise their rates, should be suppressed."

LES POULTER'S CASE, 9 Cooke's Rep. 55. Mch. 8, Jacob. Regis le case inter Stone pl. et Rafe Waters, Henrie Bate, J. Woodbridge et mults auters poulters de Londies defendants, pur combination, confederacie, et aliance inter eur fauxment et malicionment a charger le pl. (que ad espouse la feme dun Poulter in Gracious street) one robbery del dit Rafe Water, suppose destre fait in le Countie d' Essex, et a procurer luy destre indite, arraigne, ajudge, a pende, et in execution de cest faux confederacie ils procuront divers warrants des Justices de peace, per force de que Stone fuit apprehend, examine et lye d'appearer al assises in Essex, a qui assises les defendants appieront et preferre. Un bill de indictments de robbery vers le dit plaintife. A les Justices d'assise oyant le evidence al grand Inquest overtment in Court, ils perceivont grand malice in les defendants in le prosecution del cause, et sur tout le matter, appiert, que le plaintife tout le jour in que Waters fuit rob fuit in Londres, issint q̄ ne fuit possible que il fist le robbery: et sur cole grannd inquest troue ignoramus. Et fuit move et fortment urge per le counsell des defendants, que admittant cest combination, confederacie, & alliance int lux a inditer le pl. destre faux et malicious, q̄ encore nul fuit gist p̄ ceo in ce court on ailors, p̄ divers causes: 1. p̄ ceo q̄ nul bfe de conspiracie pur le ptie grieve, on indictment, on auter suit pur le Roy gist mes on le partie grieve est indict et *legitimo modo acquietatus*, come les livres sont F. N. B. 114, b; 6 Edw. 3, 41; 24 Edw. 3, 34; 43 Ed., 3 tit. Conspir' 11; 27 Ass. pl. 59; 19 H. 6, 28; 21 H. 6, 26; 9 Edw. 4, 12, &c. 2. Thescun que conust luy mesme Culp poet, a shadower lur offences, et a terrifie ou discorage ceux que viollont prosecuter le cause vers eux surmise ou confederacie, combination, ou alliance inter eux & ptyels meanes notorious offenders eschaper

thing perfectly lawful in and of itself to do if done by persons singly, was fairly presented for the decision of the court, and it was held, notwithstanding

punishment ou al meyns Justice ferra in dannger deste pervert, et grannd offences deste smother, et pur ceo fuit dit per eux, que ne fuit ascuv president ou garrant in ley a maintenir tiel bill come ceo est. Mes sur bon consideration fuit resoluë, que le bill fuit maintainable. Et in cest case divers points fueront resoluë.

1. Que al common ley (que non solement fauor le vie mes auxy le libertie dun home, et freedom del imprisoñit) quant home fuit imprison, by morte hors, &c., ou *prima facie* at la ley it ne fuitailable. A ne detineatur din in prisona, s'trangs al venne des Justices in eire, cõe appiert by le statute de W. I. caps. II, le prisoner in tiel case poet auerbr de *Odio & atia direct al viscont, &c., assumptis secum custodibus plitorũ coronae in pleno comit per sacramit proboru & legaliũ homin, &c., inquirotrũ. A. captus et detent in prisona, &c., pro morte W. onde retrat i. accusatus est retrat sit odio et atia, an eo qd. inde culpab fit & fi odio et atia, tune quo odio et alia, &c., nisi indictatus vel appellatus fuer coram iusticiar nostris ultim itinerantib in partibus illis, et pro hoc captus et imprisonatus, &c., p que appiert qũ le prisoner soit indite* on appeale et p force de ceo imprison, le dit bñe esteant forsque surmise ne gist encounter le dit matter de record.

2. Est deste observe, que u sur le dit briefe de odio & artia le jurie trone luy rien Culp oncore le viscount one les Coroners on ascum de eux ne poyent luy bailler, mes donques issers brief de Ponendo in ballium al viscount, quel bre recite *Cuquisition p qũ est trone le prison destre rien Culp ou qũ il sist ceo se defendendo, et non feloniam ex malitia præcogitata vel per infortunium tibi præcipimus quod si præ diet A. inuenerit tibi 12. probos et legales homines de Comitatu tuo, &c., qui eum manucapiant habere coram Justiciariis nostris ad primam Assisam, &c., ad standum, &c., tune ipsum A., &c., prædict 12. interim tradas in ballium.* Per que appiert, que in tiel case le viscount sans briefe ne poet luy bailler, ne bailler p bre desopth le number de 12 p sous Ar. qux luy bailler. *Vide magna Charta cap. 16, W. 1, cap. 11. Gloc' c. 9, W. 2, C. 29.* Mes ore cest briefe de Odio & atia est defendu p le statute de 28 Edw. 3, cap. 9 *Vide Register ubi supra Stanford pl. Cor. 77 g. vide Bracton lib. 3, fol. 121 b.*

3. Est deste observe que la fuit un meane per le common ley devant indictment a protecter le innocent incont faux accusation, et a deliner luy hors de prison, et sicome Odium in le dit briefe signifie Hatred issint Acia sine Atia signifie Malice, pur ceo que malicia est Acida. 1 Egre, Sharpe, et Cruell.

efforts to bring the case within a statute and the fact that the increased rate of wages demanded was not in excess of that allowed by the statute, that indepen-

Et voier, q̄ brife de conspiracie ne gist sinon q̄ le partie soit indite, & *legitimo mods acquietatus*, car issint sont les parols del brieve; mes que faux confederacie inter divers persons serra punie coment que nul chose soyt mise in ore, est pleine & manifest in noster Livres: Et pur ceo in 27 Ass. p. 44, in les articles del charge inquirer per inquest in banke le Roy la est un. *Nota* que deux fueront indite de confederacie chescun de lux a maintayner auter le quel lour matter soyt veraye ou faux, & non obstant q̄ nul chose fuit suppose destre mise in ore, les parties fuerant mise a responder a ceo, eo que cest chose est defendue per le Ley; queux sont de mote in mote les parols del Livre, quel prove q̄ tiel faux confederacie est punishable coment que le conspiracie ou confederacie est defendue per le ley coment que ceo ne fuit mise in ore ou execute; issint la in le procheine article in mesme le liur inquirer serra fayt de conspirators & confederators que soy inter eux alliout, &c., de fauxment enditer, ou acquiter, &c., le manner de alliance et enter queux, quel prone auxy quē confederacie de inditer ou acquiter coment que rien soit execute est punishable per le ley: Et est auter article concernant conspiracie inter merchants. Et in ceux case le conspiracie ou confederacie ne soit execute, & est tenu in 19 R. 2 tit. Brife 926 home anera brieve de conspiracie coment que ils ne fier rics mes confederat in ensemble & il recovers damages & poient ēe indite de ceo auxy, Auxy le usuall commission de oyer & terminer don power aux commissioners de inquirer & de omnibus *coadunationibus, confederationibus & falsis allidantiis, et coadunario* est un writing d'eux neesm ensemble, *confederatio* est un combiuation inter eux & *falsa alligantia* est un faux alliance chescun al auter par obligation ou promisē a executer ascum illoyall act; in ceux cases devant le illoyall fact execute, le Ley punie le coadunation, confederacie ou faux alliance au fine a p̄uenī le illoyall fact, *quid quando aliquid prohibetur. et id per quod perveniter ad illud; et affectus punitur licet non sequatur effectus*; et in ceux cases le common ley est de mercie car ceo prevent le misfeasor a faire mischiefe et le innocent a suffer ceo. Hill 37, H. 8, in le Star-chamber ou priest fuit *stigmatiens* one F. & A. in son forehead, et mise sur le pillorie in Cheap side one paper escrie, for *false accusation*. Mich. 3 & 4, P & M un auxy *p* auxiel case fuit *stygmaticus* one F. & A. in C. checke et one tiel subscript come est auantdit. *Vide Proverb, 1. Site lactauerint peccatores & dixerint vene nobiscum ot infidiemur sanguini, abscondamus tendiculas contr infontem frustra, &c., omnem pretrosam substantiam reperiemus & impletimus domus vvas spolis, &c. Fili mī ne ambules cu eis, &c., pedes enim cor ad*

dently of the statute, the combination of workmen for an increase of wages was an indictable conspiracy at common law. That the mere conspiracy constituted the offense. This ruling was based on the case of the *Tubwomen v. The Brewers of London*, or more properly the *King v. Sterling*, which held that the mere conspiracy to depauperate the farmers of

malum currant & pestimar vt effundant sanguinem. Et puis upon le oyer del case, et sur pregnant prooffe les def. fuer setece pur le dit faux confederacie *p* (by) fine et imprisonment. Note Lecteur, ceux confederacies, punishable *p* (by) ley, dunt que ils sont execute conient dauer 4. incidents; 1. couyent estre declare per ascum maner de prosecution come in cest case it fuit, ou by fesañt de bonds on promises, lun al auter: 2. coniet estr malicious come for unriest revenge, &c., 3. conient estr faux, excount un innocent: 4. conient estr hors de Court volontairement.

[Continued in Moores Rep. 813, Stone vers. Walter & Auters.]

Nota hoc Termino Eu un suit in *Camera Stelletta* by Stone vers. un Walter et divers auters Poulters de London, le case fuit que Walter, esteant rob, accusa Stone destre le party que luy rob, et apres devant le Greencloth lou Walter fuit convent pur cest false accusacon quia Stone fuit un purveyor pur coles et il fuit mistaken, car un home poit estre semble al un auter. Et encore quia aps Stone ne fuit satisfy ove ceo, mes arrest Walter en un accon sur le case pur les parols, Walter arreare luy accuse del felony, per que il fuit bound over as Sessions del grand Assizes en Essex: a quel lieu les Poulters luy accompany et ascuns de eur desont al bar que Walter fuit un honest man ovtmtenle hearing de plusorg des judges al temps q les judges óverges fueront ē le hearing del evidence agtmt done al bar sur le preferring del indictment. Et Walter jarre la vireament que Stone fuit le party que luy rob. Encore sur les circonstances del case apparant, les jurors trovout un *ignoramus* per que Stone unuchs fuit indict. ne puissoit estre loyalment acquit. Unc, pur le conspiracy de luy accuser, tous les def, fuer fine, et Walter grievousnent al pillory en 3 lieux, et destre mark en le face ove 2 letters, F. & A, pur un false accuser. Et Cook Chiefe Justice del Common Please, et Flemming Chief Justice, Egerton Chancellor tous agraont, que per le commission del peace et oyer et terminer, tiels confederacies sont punishable per indictment al suit le Roy, consent que le party in ne poit aver aseñ accon; et sic auxi mable en le Star-chamber. Et *nota* que suit resolve en cest case que Lou Walter fuit sapprentice dun Bate un auter des def. que Bare en un accon sur le case port— le dit Walter puissoit assets loyalmt maintenir Walter ove argent., &c. *Vide* 21, H. 7, 40.

the excise, by refusing for a certain time to brew small beer, without anything being done to carry out the conspiracy, and notwithstanding the fact that each brewer if acting solely on his own volition and without entering into a conspiracy, had the right to cease brewing small or any other kind of beer, was an indictable conspiracy. The ruling in that case was based on what is known as the "Poulter's case," which is set out in the notes to this section. In that case the conspiracy was falsely and maliciously to charge one Stone with the robbery in the county of Essex of one Waters, and cause him, Stone, to be indicted, arraigned, adjudged, and hanged, and in carrying out the conspiracy warrants were issued on which Stone was apprehended and bound to appear at the assizes in Essex, at which an indictment was preferred, but the justice of assize hearing the evidence to the grand jury openly in court noticed great malice toward Stone on the part of the defendant, and it appearing from the evidence that Waters, during the whole day he was alleged to have been robbed was in London, and therefore could not have been robbed, the bill was returned—*Ignoramus*. It was held a conspiracy whether the matter was true or false or whether nothing was done to carry out the conspiracy. While it was impossible for Waters to have been robbed, yet it was held that the conspiracy to charge Stone with the crime was indictable, and the defendants were convicted. Reference was made to an anonymous case in 1354, 27 Ass. 138, in which there was a conspiracy between two persons to maintain each other whether his cause was true or false, which was held to be forbidden by law. Thus it will be seen that as far back as 1354, a conspiracy, without reference to the subject-matter of it, was a crime. We therefore do not think that Hawkins,

Wharton and Bishop were mistaken when they wrote their works on criminal law, and we feel justified in joining issue with the decision in the Master Stevedores' case in the proposition that "it is not nor has it ever been a rule of the common law that any mutual agreement among journeymen for the purpose of raising their wages is an indictable offense, or that they are guilty of a conspiracy if, by preconcert and arrangement, they refuse to work unless they receive an advance of wages." The following from the opinion in the master stevedore case, "the defendants according to the report, were indicted for refusing to work unless they received higher rates than the statute allowed, and, as far as can be gathered from the confused statement of the reporter, the conviction was held to be good because they had conspired to raise their wages beyond what the law permitted," is wholly inaccurate and mistaken. From the report of the case it appears that "one Wise and several other journeyman taylor, of or in the town of Cambridge, were indicted for a conspiracy amongst themselves to raise their wages; and were found guilty." There is no reference there to any statute. The defendants were indicted independently of statute, that is under the common law. But after conviction the counsel for the defendant attempted to arrest judgment, among other causes, because the indictment did not conclude *contra formam statuti*, thus endeavoring to bring the case within the statute, but the court squarely met the issue in the following language: "this indictment need not conclude *contra formam statuti*, because it is for a conspiracy, which is an offense at common law." And again "the indictment it is true sets forth, that the defendants refused to work under the wages which they demanded; but

although these might be more than is directed by the statute, yet it is not for the refusing to work, but for conspiring that they are indicted, and a conspiracy of any kind is illegal, although the matter about which they conspired might have been lawful for them or any of them to do, if they had not conspired to do it," &c. This is the statement of the court. The language of the Crown Counsel relieves the subject of all doubt, "the omission in not concluding this indictment *contra formam statuti* is not material, because it is for a conspiracy, which is an offense at common law. It is true, the indictment sets forth, that the defendants refused to work under such rates, which were more than enjoined by statute, for that is only two shillings a day; but yet these words will not bring the offense for which the defendants are indicted to be within the statute, because it is not the denial to work except for more wages than is allowed by the statute, but it is for a conspiracy to raise their wages for which these defendants are indicted. It is true, it does not appear by the record that the wages demanded were excessive; but that is not material, because it may be given in evidence."

The court in the case of the Master Stevedores in further commenting on the case of the Tubwomen *v.* The Brewers of London says, "it would have been more correct to have said that it warrants the conclusion that though the Brewers, or any of them, had the right to cease brewing, or to raise the price of their ale, it was unlawful for them to combine to do so for such an object as the one above stated. *The case is an authority simply for a familiar principle of the criminal law, that it is a conspiracy to combine to do a lawful act for an unlawful purpose or by unlawful means.*" It would seem from this language that the

learned court succeeded in proving the proposition that he set out to disprove. That sometimes happens. The following startling proposition also appears in that case: "It has never been decided in England or America that it was unlawful for journeymen to *agree* that they would not work except for certain wages." If the meaning was that journeymen out of employ had the right to agree not to accept service below certain rates, then the proposition is correct, for it would require no argument to prove anything so plain. And even then it is well not to overlook the fact that in early times, not only the price of labor but of nearly everything else was regulated in England by statute. But if the meaning was what it appears to be, that it was never decided that it was unlawful for journeymen in employment to agree not to work except for certain wages, then the statement is distinguished for being a bold one. Without referring further to the English cases we have been considering, some additional ones will be noticed, and the American cases will be considered in a separate section.

In 1847, Baron Rolfe in the case of *Reg. v. Selby*,¹ said: "The law certainly now on this subject depends, I believe, entirely (that is, the law about the rights of workmen), upon the statute [6 Geo. 4 C. 129,] which has been referred to; before that statute it always having been considered, whether rightly or not I will not now say, that masters might meet to say that they would not give more than a certain rate of wages. When I first had the honor of becoming a member of the profession, that was understood to be the law, that though the masters might meet to fix the

¹ See remarks of Baron Rolfe in *Reg. v. Selby*, in note to *Reg. v. Roulands* 5 Cox, C. C. 495, against the right of workmen to meet to fix prices.

rates of wages, the workmen might not. The masters might agree not to give more than a certain sum per day. There was a meeting of coachmakers in London, and at a variety of other places, at which that was done; but for the workmen to meet and say, we will not work unless they will give us 5 s. a day, or whatever sum they might demand, that was always held to be illegal, and it struck everybody's mind as being an unjust sort of distinction. If there is to be any distinction perhaps it ought to be rather the other way, and being felt to be an injustice, the law was altered about twenty years ago. It was then modified, and now depends upon an act 6 Geo. 4, which repeals all former enactments," &c. Lord Campbell said a conspiracy was a common law offense.¹ Baron Cleasley held that "conspiracy consists simply in the agreement or confederacy to do some act, no matter whether it is done or not."² Following the rule laid down in *Rex v. Sterling*, it was held:³ "A bare conspiracy to do a lawful act to an unlawful end, is a crime, though no act be done in consequence thereof." The facts in the case were, the defendants conspired together to give a poor man in one parish money to enable him to marry a poor helpless woman in another parish so that she would become a charge upon the parish where her husband resided. The purpose was to shift the responsibility for her support from one parish to another. While it was not only lawful but commendable to encourage marriage, yet to force by a conspiracy of citizens in a parish liable for the support of a pauper, on another parish not liable to support her, by bringing about a marriage between two paupers,

¹ *Reg. v. Rowlands et al*, 5 Cox C. C., 466.

² *Reg. v. Hibbert*, 13 Cox C. C., 82; *Com. v. Hunt*, 4 Metc., 111.

³ *King v. Edwards*, 8 Modern, 320.

was an unlawful purpose, and the conspiracy indictable.

Hawkins¹ says "journeyemen confederating and refusing to work unless for certain wages may be indicted for a conspiracy notwithstanding the statutes which regulate their work and wages do not direct this mode of prosecution, for the offense consists in the conspiring, and not the refusal, and all conspiracies are illegal although the subject matter of them may be lawful—Vide the case of the Tubwomen v. the London Brewers, 8 Mod., 11, 320. So also a bare conspiracy to do a lawful act to an unlawful end is a crime, although no act be done in consequence thereof, 8 Mod., 321."

The reference to 8 Modern, 11, must have intended the King v. The Journeyemen Tailors of Cambridge, although the case of the Tubwomen v. Brewers of London is referred to in it as authority for the doctrine laid down. The reference 8 Mod., 320, 321, is King v. Edwards, above mentioned.

§ 4. Early American Cases.

1. One drawback to some of these cases is, they were tried in subordinate courts, some of them in Mayors' courts, and were never appealed. The trials were by jury and the only enunciation of the law is to be found in the charge of the court to the jury. But the presiding judges, or recorders as they are sometimes called, were lawyers of learning and ability, and their rulings are valuable as showing the early drift of judicial opinion in this country. Another difficulty is, some of the cases were only published in pamphlet form, to supply a local demand at the time, and these pamphlets are very scarce, and some of

¹ Hawkins Pleas of the Crown, Leach's 6th Ed. 348, note to § 2. Chap. 72.

them are not obtainable. But their loss is immaterial, as the doctrines they declared are no longer recognized, and because nearly every phase of a strike or lockout has been judicially passed upon by appellate courts of last resort, so there is no dearth of legal authority on the subject. Reference to these early cases is made in compliance with the almost universal expectation that the text writer will omit nothing. But in some respects they still represent the law as it is at the present time.

The first case in chronological order is that of "The Boot and Shoemakers of Philadelphia."¹

The defendants were indicted for—

FIRST. Conspiring to increase their wages as cordwainers.

SECOND. Conspiring to prevent by threats, menaces and other unlawful means, other workmen from working, except at wages they had fixed.

THIRD. Uniting themselves into a club and combination, making and ordaining unlawful and arbitrary by-laws, rules, and orders amongst themselves, and thereby governing themselves and other cordwainers, and unlawfully and unjustly exacting great sums of money, and conspiring that they would not work for any master or person who should employ cordwainers who should infringe or break the rules, orders or by-

¹ Printed in pamphlet at Phila. 1806. The statements of and extracts from this case as set out in the text are taken from the original pamphlet in the Congressional Library. The case was a jury trial in the Mayor's Court, in Philadelphia, before Recorder Levy. All of the proceedings, arguments of counsel, testimony of witnesses and charge of the court to the jury are given in full just as they transpired in the case. It attracted great local attention, and the pamphlet was gotten up in cheap form to supply the local demand.

laws of the club, and by threats, menaces and other injuries, preventing other cordwainers from working for such master, and in pursuance of such combination refusing to work at the usual rates and prices paid cordwainers, to the damage of the masters, the commonwealth, and other cordwainers.

Mr. Hopkinson, in his argument to the jury on behalf of the prosecution, said *inter alia*:

"It will be seen, that the mere combination to raise wages is considered an offense at common law; the reason is founded in common sense. Suppose the bakers were to combine and agree not to sell a loaf of bread, only for one week, under a dollar, would not this be an injury to the community? Certainly it would; and few men, unless their pockets were filled with money, could support it for any considerable length of time. All combinations to regulate the price of commodities is against the law. Extend the case to butchers, and all others who deal in articles of prime necessity, and the good policy of the law is then apparent." 1 Hawkins, C. 72, § 2, in note, was cited. Speaking of combinations he says: "But since it does not appear that such an offender is indictable by any statute, it is safest to proceed at common law."

"Where divers persons confederate together, in order to prejudice a third person, it is indictable as highly criminal at common law."

"Journeymen confederating and refusing to work, unless at increased prices, are indictable!"

"A conspiracy to do an unlawful act, though nothing [be] done, or to maintain another in any matter, whether it be true or false, is indictable."

He next cited 8 Modern, page 11, Wise against the Journeymen Taylors at Cambridge. "A conspiracy is unlawful, even though the matter might have been lawful, if done by them individually."

"Conspiracy is an offense at common law; therefore indictments need not conclude *contra formam statuti*."

"In this case there was a statute fixing the price of wages."

To the same point is the case in 8 Mod. 320; *Rex v. Edwards and others*, 4 Black. p. 136. Christian's ed. describes what a conspiracy is: "Every confederacy to do acts prejudicial to others is indictable, as to raise wages, &c." * * * "He trusted the jury would see the present cause in this double point of view; the general policy, as it relates to the good of the community, and the flourishing state of our manufactures, and the enjoyment of common and equal rights, secured by the constitution and laws. This case has exhibited such a tissue of infractions of personal rights, by the club of journeymen shoemakers, that was our state legislature to dare to pass such laws as these men have passed, it would be a just cause of rebellion. I will go further and say, it would produce rebellion if the legislature should say that a man should not work under a certain sum—it would lead to beggary, and no man would submit to it. Then, shall a secret body exercise a power over our fellow citizens, which the legislature itself is not invested with? The fact is, they do exercise a sort of authority the legislature dare not assume."

Mr. Franklin, for the defense, in reply, 1 Hawk. b. c. 72, § 2, is cited. This point rests on 8 Mod. p. 11, *Rex v. the Journeymen Taylors*. "It is not for the denial, &c., but for the conspiracy they were indicted; and a conspiracy of any kind is illegal, though the matter about which they conspired might have been lawful for them, or any of them, to do, if they had not conspired to do it."

"And it is contended that the doctrine contained in this case is law in Pennsylvania. It may be adapted

to the meridian of London, Paris, Madrid, or Constantinople, but can never suit the free State of Pennsylvania."

Mr. Rodney, for the defense, made the same objections to the authenticity of 8 Modern as are made by the court in the Master Stevedores' case. Continuing, he said: "The learned counsel has eagerly seized some loose expressions of the court, as reported in this contemptible book, in which they are made, 'a conspiracy of any kind is illegal, although the matter about which they conspired might have been lawful for them, or any of them, to do, if they had not conspired to do it, as appears in the case of the *Tubwomen v. the Brewers of London*.' If these words were to be understood in reference to the case then before the court, and to be taken according to the subject matter under their consideration, their generality would be qualified and restrained by the particular facts and circumstances upon which they were called on to give an opinion. When they proceeded beyond the fair boundary of the case, all they said is to be considered, to use a technical phrase, as *obiter dictum*; and if said by the best judges, and reported in the most accurate book, is not to be considered authority."

"Even as it is stated in 8 Mod., the court informs us that such a doctrine was held in a particular case to which they refer. They do not pretend to determine such a principle themselves, but refer to a previous decision on the subject. I should have been very glad to have seen this celebrated case of the *Tubwomen*; I believe it is not to be found. If such a case exists, let it be produced, and I will endeavor to answer it. If the gentlemen are not able to produce it, no answer is necessary; for *et non existente* and *non apparente eadem est lex*.

“There is another part of the opinion of the court on which the learned counsel seems to place great confidence. It is said by the court: ‘The indictment need not conclude *contra formam statuti*, because it is a conspiracy which is an offense at common law.’ Hence the learned counsel argue, that we have been guilty of a crime, punishable by the common law. The passage referred to admits of an easy and satisfactory explanation. It is unnecessary that I should remind you of the statute, fixing precisely to the exact measurement of feet, inches and barley corns, the wages of journeymen taylor and laborers. Whenever a statute directs a particular measure, or establishes any regulations, without prohibiting in express terms the violation of them and prescribing a punishment, any party contravening such regulations is, by the common law, subject to indictment; and the indictment is, technically speaking, styled *an indictment at common law*. I will readily admit that is the true distinction whether that object be unlawful at common law, or rendered so by statute; according to the modern system of conspiracy, they would be subject to an indictment, as it is said in this case to be, at common law.”

CHARGE OF RECORDER LEVY TO THE JURY.

“This laborious cause is now drawing to a close after a discussion of three days, during which we have had every information upon the facts and the law connected with them, that a careful investigation and industrious research have been able to produce. We are informed of the circumstance and ground of the complaints, and of the law applicable to them. It remains with the court and jury to decide what the rule of law is; and whether the defendants have, or have not violated it. In forming this decision, we

cannot, we must not, forget that the law of the land is the supreme and only rule. We live in a country where the will of no individual ought to be, or is admitted to be, the rule of action. Where the will of an individual, or of any number of individuals, however distinguished by wealth, talents, or popular fame, ought not to affect or control, in the least degree, the administration of justice. There is but one place in which to determine whether violation and abuses of the law have been committed—it is in our courts of justice; and there only after proof to the fact, and consideration of the principles of law connected with it.

“The moment courts of justice lose their respectability, from that moment the security of persons and of property is gone. The moment courts of justice have their characters contaminated by a well founded suspicion, that they are governed by caprice, fear or favor; from that moment they will cease to be able to administer justice with effect, and redress wrongs of either a public or a private nature. Every consideration, therefore, calls upon us to maintain the character of courts and juries; and that can only be maintained by undeviating integrity, by an adhesion to the rules of law, and by deciding impartially in conformity to them.

“Very able research has been made in this enquiry, and every principle necessary for your information has been laid before you. As far as the arguments of counsel apply to your understanding and judgment, they should have weight; but if the appeal has been made to your passions, it ought not to be indulged. You ought to consider such appeals as an attack upon your integrity, as an attempt to enlist your passions against your judgment, and, therefore, listen to them with great distrust and caution. If this enquiry had

been confined to its proper object and merits, it need not have been extended to the length to which it has been drawn out, but many circumstances foreign to the case have been brought into view. An attempt has been made to show that the spirit of the revolution and the principle of the common law, are opposite in this case. That the common law, if applied in this case, would operate as an attack upon the rights of man. The enquiry on that point, was unnecessary and improper. Nothing more was required than to ascertain what the law is. The law is the permanent rule, it is the will of the whole community. After that is discovered whatever may be its spirit or tendency, it must be executed, and the most imperious duty demands our submission to it.

“It is of no importance whether the journeymen or the masters be the prosecutors. What would it be to you if the thing was turned round, and the masters were the defendants instead of the journeymen? It is immaterial to our consideration whether the defendants are employers or employed; poor or rich—whether their numbers are diminutive or great. If they have done wrong, and were ten thousand strong, I should look upon myself guilty of a breach of my oath and of the law, if their numbers protect them from justice or prosecution, from plainly declaring my opinion, if I thought them guilty; while I sit here, however distinguished for wealth, or talents, respectability, or numbers the defendants may be, if they have violated the law, I trust I shall have firmness enough to say so, regardless of what the world may think of me, or of popular abuse. This is the duty of the judge and also of the jury. If they decide one way when one man is implicated, and another when twenty, the rights, the liberties and privileges of man in

society can no longer be protected within these hallowed walls. Numbers would decide all questions of duty and property, and causes would be hereafter adjudged, not by the weight of their reason but according to the physical force of the parties charged. This jury will act without fear or favor; without partiality or hatred; regardless whether they make friends or enemies by their verdict—they will do their duty—they will, after the rule of law has been investigated and laid down by the court, find a verdict in conformity to the justice of the case.

“If this, gentlemen, is the disposition, there are only two objects for your consideration.

“FIRST. What the rule of law is on this subject.

“SECOND. Whether the defendants acted in such a manner as to bring them within that rule?

[Here the Recorder referred to books of authority.]

“No matter what their motives were, whether to resist the supposed oppression of their masters, or to insist upon extravagant compensation. No matter whether this prosecution originated from motives of public good or private interest, the question is, whether the defendants are guilty of the offenses charged against them? A great part of the crimes prosecuted to trial in this court are brought forward, I believe, from improper motives; for example, the prosecutions against tippling-houses are generally occasioned by a difference taking place between the buyer and seller, when the one is nearly as much in fault as the other. In the case of the crime of treason, it is often one of the parties who impeaches the other, and a quarrel about the felonious booty often leads to the detection of the thief. If the defendants are guilty of the crime, no matter whether the prosecutor brings his action from motives of public good or private resent-

ment. The prosecutors are not on their trial, if they have proved the offense alleged in the indictment against the defendants; and if the defendants are guilty, will any man say that they ought not to be convicted, because the prosecution was not founded in motives of patriotism? Certainly the only question is, whether they are guilty or innocent? If they are guilty and were possessed of nine-tenths of the soil of the whole United States, and the patronage of the Union, it is the bounden duty of the jury to declare their guilt.

"I am endeavoring to divest the case of what may prejudice its merits.

"What are the offenses alleged against them? They are contained in the charge of the indictment.

[Here he recited from the indictment the first and second counts.]

"These are the questions for our consideration, and it lies with you to determine how far the evidence supports the charges, and how the principles of the law bear upon them.

"It is proper to consider, is such a combination consistent with the principles of our law, and injurious to the public welfare?

"The usual means by which the prices of work are regulated are the demand for the article and the excellence of its fabric. Where the work is well done, and the demand is considerable, the prices will necessarily be high. When the work is ill done, and the demand is inconsiderable, they will unquestionably be low. If there are many to consume, and few to work, the price of the article will be high; but if there are few to consume, and many to work, the article must be low. Much will depend, too, upon these circumstances, whether the materials are plenty or scarce; the price of the commodity will in consequence be

higher or lower. These are the means by which prices are regulated in the natural course of things. To make an artificial regulation, is not to regard the excellence of the work or quality of the material, but to fix a positive and arbitrary price, governed by no standard, controlled by no impartial person, but dependant on the will of the few who are interested; this is the unnatural way of raising the price of goods or work. This is independent of the number of customers, or of the quality of the material, or the number who are to do the work. It is an unnatural, artificial mean [s] of raising the price of work beyond its standard, and taking an undue advantage of the public. Is the rule of law bottomed upon such principles as to permit or protect such conduct? Consider it on the footing of the general commerce of the city. Is there any man who can calculate (if this is tolerated) at what price he may safely contract to deliver articles for which he may receive orders, if he is to be regulated by the journeymen in an arbitrary jump from one price to another? It renders it impossible for a man making a contract for a large quantity of such goods to know whether he shall lose or gain by it. If he makes a large contract for goods to-day, for delivery at three, or six, or nine months hence, can he calculate what the price will be then, if the journeymen in the intermediate time are permitted to meet and raise their prices, according to their caprice or pleasure? Can he fix the price of his commodity for a future day? It is impossible that any man can carry on commerce in this way. There cannot be a large contract entered into but what the contractor will make at his peril. He may be ruined by the difference of prices made by the journeymen in the intermediate time. What then is the operation of this kind of conduct upon the

commerce of the city? It exposes it to inconvenience, if not to ruin; therefore, it is against the public welfare. How does it operate upon the defendants? We see that those who are in indigent circumstances, and who have families to maintain, and who get their bread by their daily labor, have declared here upon oath that it was impossible for them to hold out; the masters might do it, but they could not; and it has been admitted by the witnesses for the defendants that such persons, however sharp and pressing their necessities, were obliged to stand to the turn-out, or never afterwards to be employed. They were interdicted from all business in future if they did not continue to persevere in the measures taken by the journeymen shoemakers. Can such a regulation be just and proper? Does it not tend to involve necessitous men in the commission of crimes? If they are prevented from working for six weeks it might induce those who are thus idle, and have not the means of maintenance, to take other courses for the support of their wives and children. It might lead them to procure it by crimes—by burglary, larceny, or highway robbery! A father cannot stand by and see, without agony, his children suffer; if he does, he is an inhuman monster; he will be driven to seek bread for them, either by crime, by beggary, or removal from the city. Consider these circumstances as they affect trade generally. Does this measure tend to make good workmen? No. It puts the botch, incapable of doing justice to his work, on a level with the best tradesman. The master must give the same wages to each. Such a practice would take away all the excitement to excel in workmanship or industry. Consider the effect it would have upon the whole community. If the masters say they will not sell under certain prices, as the journeymen declare

they will not work but at certain wages, they, if persisted in, would put the whole body of the people into their power. Shoes and boots are articles of the first necessity. If they could stand out three or four weeks in winter, they might raise the price of boots to thirty, forty, or fifty dollars a pair, at least for some time, and until a competent supply could be got from other places. In every point of view this measure is pregnant with public mischief and private injury, tends to demoralize the workman, destroy the trade of the city and leave the pockets of the community to the discretion of the concerned. If these evils were unprovided for by the law now existing it would be necessary that laws should be made to restrain them.

“What has been the conduct of the defendants in this instance? They belong to an association, the object of which is, that every person who follows the trade of a journeyman shoemaker, must be a member of their body. The members of the body will not work with them, and they refuse to board or lodge with them, the consequence is, that every one is compelled to join the society. It is in evidence, that the defendants in this action, all took part in the last attempt to raise their wages; Kimer was their secretary, and the others were employed in giving notice, and were of the tramping committee. If the purpose of the association is well understood, it will be found they leave no individual at liberty to join the society or reject it. They compel him to become a member. Is there any reason to suppose that the laws are not competent to redress an evil of this magnitude? The laws of this society are grievous to those not inclined to become members—they are injurious to the community, but they are not the laws of Pennsylvania. We live in a community where the

people in their collective capacity give the first momentum and their representatives pass laws on circumstances, and occasions, which require their interference, as they arise.

“But the acts of the legislature form but a small part of that code from which the citizen is to learn his duties, or the magistrate his power and rule of action. These temporary emanations of a body, the component members of which are subject to perpetual change, apply principally to the political exigencies of the law.

“It is in the volumes of the common law we are to seek for information in the far greater number, as well as the most important causes that come before our tribunals. That invaluable code has ascertained and defined, with a critical precision, and with a consistency that no fluctuating political body could or can attain, not only the civil right of property, but the nature of all crimes from treason to trespass, has pointed out rules of evidence and the mode of proof, and has introduced and perpetuated, for their investigation, that admirable institution, the freeman's boast, the trial by jury; its profound provisions grow up, not from the pressure of the only true foundations of all knowledge, long experience and practical observation at the moment, but from the common law matured into an elaborate connected system. Law is [established] by the length of time it has been in use and the able men who have administered it. Much abuse has of late teemed upon its valuable institutions. Its enemies do not attack it as a system; but they single out some detached branch of it, declare it absurd or [un]intelligible, without understanding it. To treat it justly they should be able to comprehend the whole. Those who understand it best entertain the highest

opinion of its excellence. No other persons are competent judges of it. As well might a circle of a thousand miles diameter be described by the man, whose eye could only see a single inch as the common law be characterized by those who have not devoted years to its study. Those who know it, know that it regulates with a sound discretion most of our concerns in civil and social life. Its rules are the result of the wisdom of ages. It says that there may be cases in which what one man may do with [out] offense, many combined may not do with impunity. It distinguishes between the object so aimed at in different transactions. If the purpose to be obtained, be an object of individual interest, it may be fairly attempted by an individual. Many are prohibited from combining for the attainment of it.

“What is the case now before us? A combination of workmen to raise their wages may be considered in a twofold point of view: one is to benefit themselves, the other is to injure those who do not join their society. The rule of law condemns both. If the rule be clear, we are bound to conform to it even though we do not comprehend the principle upon which it is founded. We are not to reject it because we do not see the reason of it. It is enough that it is the will of the majority. It is law because it is their will; if it is law, there may be good reasons for it though we cannot find them out. But the rule in this case is pregnant with sound sense and all the authorities are clear upon the subject. Hawkins, the greatest authority on the criminal law, has laid it down, that combination to maintain one another, [in] carrying [out] a particular object, whether true or false, is criminal—the authority cited from 8 Mod. Rep., does not rest upon the reputation of that book. He gives you other

authorities to which he refers. It is adopted by Blackstone, and laid down as the law by Lord Mansfield in 1793, that an act innocent in an individual, is rendered criminal by a confederacy to effect it.

“In the profound system of law, (if we may compare small things with great) as in the profound systems of Providence, there is often great reason for an institution, though a superficial observer may not be able to discover it. Obedience alone is required in the present case, the reason may be this. One man determines not to work under a certain price and it may be individually the opinion of all; in such a case it would be lawful in each to refuse to do so, for if each stands alone, either may extract [retract] from his determination when he pleases. In the turn-out of last fall, if each member of the body had stood alone, fettered by no promises to the rest, many of them might have changed their opinion as to the price of wages and gone to work; but it has been given to you in evidence, that they were bound down by their agreement, and pledged by mutual engagements, to persist in it, however contrary to their own judgment. The continuance in improper conduct may therefore well be attributed to the combination. The good sense of those individuals was prevented by this agreement from having its free exercise. Considering it in this point of view, let us take a look at the cases which have been compared to this by the defendant’s counsel. Is this like the formation of a society for the promotion of the general welfare of the community, such as to advance the interests of religion, or to accomplish acts of charity and benevolence? Is it like the society for extinguishing fires? Or those for the promotion of literature and the fine arts, or the

meeting of the city wards to nominate candidates for the legislature or the executive? These are for the benefit of third persons, the society in question is to promote the selfish purposes of the members. The mere mention of them is an answer to all that has been said on that point. There is no comparison between the two; they are as distinct as light and darkness. How can these cases be considered on an equal footing? The journeymen shoemakers have not asked an increased price of work for an individual of their body; but they say that no one shall work, unless he receives the wages they have fixed. They could not go farther than saying no one should work unless they all got the wages demanded by the majority; is this freedom? Is it not restraining instead of promoting the spirit of '76 when men expected to have no law but the constitution, and laws adopted by it or enacted by the legislature in conformity to it? Was it the spirit of '79 [76] that either masters or journeymen, in regulating the prices of their commodities should set a rule contrary to the law of their country? General and individual liberty was the spirit of '76. It is our first blessing. It has been obtained and will be maintained—we will not leave it to follow an *ignus fatuus*, calculated only to mislead our judgment. It is not a question, whether we shall have an *imperium in imperio*, whether we shall have besides our State Legislature a new legislature consisting of journeymen shoemakers. It is of no consequence whether the prosecutors are two or three, or whether the defendants are ten thousand, their numbers are not to prevent the execution of our laws, though we acknowledge it is the hard hand of labor that promises the wealth of a nation, though we acknowledge the usefulness of such a large body of tradesmen and agree

they should have everything to which they are legally entitled; yet we conceive they ought to ask nothing more. They should neither be slaves nor the governors of the community.

"I thought it necessary to say this much, as this trial appears to have excited a great deal of interest in the city. The numerous attendants that we have witnessed during the course of the trial, show that numbers of our fellow citizens wait the result with anxious expectation. It lays with you gentlemen of the jury, to decide.

"The sentiments of the Court, not an individual of which is connected either with the masters or journeymen; all stand independent of both parties—are unanimous. They have given you the rule as they have found it in the book, and it is now for you to say, whether the defendants are guilty or not. The rule they consider as fixt, they cannot change it. It is now, therefore, left to you upon the law, and the evidence, to find the verdict. If you can reconcile it to your conscience, to find the defendants not guilty, you will do so; if not, the alternative that remains is a verdict of guilty."

The jury returned a verdict of guilty, and the defendants were fined, by the Court, eight dollars each and costs of suit.

2. The case of the Journeymen Cordwainers of the City of New York is the next case in order,¹ The defendants were indicted:

¹ The Journeymen Cordwainers of the City of New York, Yates Select Cases, III; or The People of the State of New York *v.* Melvin *et al*, 2 Wheelers Crim. Cases, 262. These cases are identical. The first is the heading given on the first page of the case, but on the second page the title is "The people of New York *v.* James Melvin" and the names of twenty-three others are given. Yates Select Cases contains but two cases viz: "Case of J. V. N. Yates," and "The

FIRST. For in brief unlawfully, perniciously, and deceitfully organizing themselves into a club or combination, and making unlawful by-laws, rules and orders among themselves and other workmen in the cordwainers art, and extorting great sums of money, and by force and arms, unlawfully assembling together and conspiring not to work for any master or other person who should employ workmen, journeymen or any other person in the said art, who were not members of their club, after notice given to discharge such workmen from his employ.

SECOND. For conspiring together not to work for any master or person whatsoever in the said art, who should employ any workmen who infringed or broke any of their rules, &c.

THIRD. For conspiring not to work for any master or person who should employ any workmen who broke any of their rules or by-laws, unless the workmen so offending should pay to the club such fine as should be assessed against him, and that in particular they would not work for James Corwin and Charles Aimes, because they employed Edward Whittess,

Case of the Journeymen Cordwainers of the City of New York." "Yates Select Cases" is a misnomer. On the back of the book is "Select Cases" only. The title page is, "Select Cases adjudged in the Courts of the State of New York, Vol. 1. Containing the case of John V. N. Yates, and the case of the Journeymen Cordwainers of the City of New York. Printed and published by Isaac Riley, 1811." There is no authority for calling it "Yates" Select Cases, but as it is so cited in other works, to prevent confusion it is so cited in this. 2 Wheeler's Criminal Cases, is a collection of criminal cases decided in the Federal and various State Courts. Both of these volumes are out of print. The report in Wheeler is condensed, but that in "Yates" appears to have been a stenographic report of the trial. The speeches of the counsel are reported in full. The trial was before the Recorder by jury. Verdict of guilty and defendants fined one dollar each.

a cordwainer, who had broken one of their rules, and refused to pay a fine of two dollars therefor.

FOURTH. That they wickedly, unjustly and unlawfully conspired to impoverish by *indirect means*, said Whittess, and hinder him from following his trade and did hinder him from following it, and did greatly impoverish him.

FIFTH. For conspiring and agreeing by indirect means, to prejudice and impoverish Whittess, and prevent him from exercising his trade.

SIXTH. For conspiring not to work for the customary wages paid cordwainers, and to demand and extort for their labor in their said art, great sums of money. The rates demanded are set out in the count, but need not be repeated here.

SEVENTH. Conspiring to unjustly and oppressively increase their own and the wages of other workmen, and that they would by threats and other unlawful means, prevent or endeavor to prevent other cordwainers from working at lower rates.

EIGHTH. Conspiring that they would not work for any master who should have more than two apprentices at the same time, to learn the art of cordwaining.

NINTH. Combining by indirect means to prejudice and impoverish certain master shoemakers and prosecutors of the indictment.

A motion to quash the indictment was very elaborately and ably argued, but the recorder before whom it was made took it under advisement, and before passing upon it went out of office. The counsel did not wish to go to the labor of rearguing it, and therefore the motion was not renewed before the new recorder and was never passed upon.

On the argument to quash, the doctrine in 8 Modern was assailed, as it had been in the case of the Boot

and Shoemakers of Philadelphia. Extracts from the arguments pro and con are given because they present both views of the subject as satisfactorily and ably as they can be, and are very interesting.

Mr. Sampson, in support of the motion, said, "If Hawkins had thought workmen indictable for combining to regulate their wages, he would, with his usual precision, when treating so minutely on the subject, have given his authority for saying so. His silence on the subject is conclusive that he never even had such an idea, and that there was no such authority. Another paragraph was cited, from what is called Leach's Hawkins, which paragraph Hawkins never wrote, nor could have written, viz. 'that all confederacies are unlawful, though the object of them be lawful.' The case from which this strange sentence is borrowed is that of the journeymen taylors of *Cambridge*, in the seventh year of Geo. I. The death of Queen Anne, and the accession of George, happened in 1714. The case must have been decided about 1721. Serjeant Hawkins' entire work, in two folio volumes, was published in 1716. This passage is in the first volume. It is not to be found in the folio editions, but is interlarded in small type in the new editions, which unfortunately contain more of what Hawkins did not write than of what he did. If the venerable serjeant were to return upon this earth, I think he would look twice at some of those notemongers, who had conspired with the booksellers falsely to charge him with being the father of such spurious offspring, and placard the fair monument of his learning and industry with such obscenities. The book from which this queer doctrine has been extracted is, moreover, the worst book of English reports under which the

shelf groans. It is a book with two names, and equally condemned by either.

"Its character is to be found in *Sir William Burrows' Reports*, given not only by that judicious reporter but also by Lord Mansfield and his brethren.

"In one case he calls it 'a miserable bad book, entitled *Modern Cases in Law and Equity*.'

"In another, he says, that when 8 Mod. was cited 'the court treated the book with the contempt it deserved, and they all agreed that the case was wrongly stated.'

"See, then, upon what crutches this lame cause hobbles.

"Hawkins (I don't mean Leach's Hawkins, but Hawkins' Hawkins) refers by the letter (c) to three cases only for the doctrine of conspiracy to impoverish by indirect means. And as *Hawkins* was only compiling from books of reports, and only digesting and arranging the law he found there, it is, after all, the authorities he vouches that are the law, his book, which is but the index to them. To these cases then let me resort, and if they be clear we get rid of all ambiguity." * * *

"*Rex v. Aldermen Sterling and Others*, was an *ex officio* information and concerned the *Kings' revenue*. Sixteen or seventeen brewers of *London* were indicted for making orders that no beer called gallon beer should be sold but of a certain price. This order was averred to have been made with a view to *impoverish* the King's excisemen, and bring them into hatred and contempt with the people, and incite the people to mutiny and sedition, and to pull down the excise house, and to deprive the King of 118,000 l. rent which he had by the tax upon this beer. The jury found them guilty of meeting and consulting to im-

poverish the excisemen, and of nothing more. It was moved, in arrest of judgment, that if any injury was done it was to be remedied by civil suit, and the excisemen being private individuals that no public prosecution could be maintained. The judges so far admitted this as a general principle, but distinguished between this and other cases; because, they said, it concerned the King's revenue, and was therefore a public offense. The principle of the decision seems truly to have been this, that *reges habent longas manus*. Be that as it will, this case proves clearly that any interpretation of Hawkins text is right; for if all confederacies, by direct means to impoverish a third person, were guilty, there could have been no doubt in this case upon the special finding, and no room for the distinction drawn by the court, nor for argument at all, whereas the court adjourned several times to hear further argument, and to have further deliberation.

"This case was referred to from that 'miserable bad book,' by the title of the Tub-women v. The Brewers of London. It seemed to puzzle the counsel in Philadelphia, and it puzzles us no less, to divine who these same tub-women could be.

"The solution of the difficulty may be this: There was formerly in the Exchequer a barrister called the tubman, who was a King's counsel, and had precedence. It might have been his duty to file this information; and the cause, which would improperly have been entitled The Tubman v. The Brewers, was still more so by this reporter, whom the court of King's bench state to have been a mistake of causes, called The Tub-women v. The Brewers. It was about gallon beer. Gallons and tubs have some affinity, gallons being but the diminutive of tubs, *sic canibus calulos similes sic matribus hædos*, and between tubmen and tub-women

there is but a syllable. A reporter so ignorant of men and things might mistake, as was his habit, and send forth the case in his report with this whimsical title.

"The same case is related in Keble's Reports [1 Keb. 530], where the various adjournments are stated, and the arguments on each day. The judges either did not well understand each other, or I do not well understand them. There are many confused dicta through the case, and I leave it to learned adversaries to make what use they can of them."

The counsel for the prosecution insisted on three points.

1. That the common law is the same in this country as in England, with no other exceptions than those specified and declared.

2. That by the common law of England the conspiracies stated in the indictment are criminal.

3. That the counts are good both in form and substance.

In reply to the attack on the case in 8 Modern, Mr. Emmet said:

"There is another and much more comprehensive description of what constitutes that offense, which we, on behalf of the prosecution, derive from Hawkins' Pleas of the Crown, where that learned author lays it down that 'there can be no doubt but that all confederacies whatever, wrongfully to prejudice a third person, are highly criminal at common law; as where divers persons confederate together by indirect means to impoverish a third person,' &c. To this I add *a fortiori*, and what followed from all the cases, that a conspiracy wrongfully to prejudice the public, is also highly criminal. In the editor's note on this passage of Hawkins, it is stated as flowing from the principle laid down in the text, that journeymen confederating

and refusing to work unless for certain wages, may be indicted for a conspiracy, notwithstanding the statutes which regulate their work and wages do not direct this mode of prosecution, for the offense consists in conspiring, and not in the refusal; and all conspiracies are illegal although the subject matter of them may be lawful. For this is cited 8 Mod., 11, and 320, and the opposite counsel triumphantly remarked that the note is Mr. Leach's production and 8 Modern most despicable authority. The true consideration, however, is whether the inference in the note is fairly deduced from the principle in the text, and whether that principle be in itself correct. As to the principle, it seems to me indisputable. Even if it rested only upon the authority of Hawkins, it would rest upon the first authority in the crown law, and one which will not mislead any judge who adopts it. But he also cites different authorities which support his position, and strongly bear upon this case. The most important is that of *Rex v. Sterling* and seventeen others. That was an information against them, that they, with divers other brewers, &c., did factiously and unlawfully assemble themselves and conspire to impoverish the excisemen, and gave orders that no small beer, called gallon beer, shall be made, &c. This conviction was supported, inasmuch as the conspiracy leads to the public, because it concerns the King's revenue; and also inasmuch as it being averred and found to be factiously and unlawfully done, that well enough explains what kind of impoverishment is intended. To this case it is objected, that it was decided for the prosecution on account of the King's revenue, and that it is founded on a Star Chamber decision, which in itself pollutes the authority. As to the first objection, the King's revenue is only men-

tioned as indicating the manner in which this conspiracy tended to the public, which was one of the principles adopted; the other was that a conspiracy unlawfully to impoverish the excisemen, is also criminal. This case therefore shows, that either a conspiracy unlawfully to prejudice other individuals, or the public at large, is an offense. As to the Star Chamber decision, that only went to the point hereafter to be considered, that an overt act need not be done to complete the offense, which is likewise supported by the authority of 9 Coke, the Poulterns' case and many other decisions; I cannot but also observe that although the summary and arbitrary mode of proceeding in that Court has rendered it justly odious, yet some of the best authorities we have in our reports, particularly in Coke's Reports, are Star Chamber Cases." * * * "The principle then being settled, let us examine whether Mr. Leach's inference from it in his note be just. He cites 8 Mod. against which outcry is raised on the authority of Burrows. That there are many cases defectively reported in that book is certain; but there are many others the correctness of which has never been doubted. It is relied upon by the very latest writer on Crown Law, and that where he lays down the nature of a conspiracy in a manner very applicable to our case, 1 East's Crown Law, 462: 'An indictment lies wherever either conspiracy is entered into for a corrupt and illegal purpose, or by the use of unlawful means to effect a legal purpose, although such purpose be not effected.' In the case of *The King v. The Journeymen Taylors of Cambridge*, the doctrine is broadly laid down; and in support of it is vouched the case of *the Tubwomen v. The Brewers of London*, which has puzzled not only the opposite counsel, but

those who in a neighboring state have examined this question, to know where that case is to be found, or what it means. My learned friend, however, has settled into the belief that it means *The King v. Alderman Sterling* and others, already commented upon. In this I concur, although not for the reasons he assigns. For it having been tried and decided in the King's Bench, the Tubman of the court of Exchequer could have nothing to say to it; and even if he had, I do not see why its being conducted by an officer called the Tubman of that court should entitle it to be called the Tubwomen's case. The truth I presume, is that the small beer, mentioned in the report as being sold to the poor, was hawked about, as similar beverages are in many countries, and sold in the streets by women, who from their occupation and the vessel in which was contained the article they sold, were called Tubwomen. And when the brewers of London combined not to make or permit any more such beer to be made, by which the occupation of these women was ruined, it is very probable that their interest and activity against the brewers made them conspicuous personages in the cause, and procured the name of the case. Be that however, as it may, the case of the *King v. Sterling*, undoubtedly contains the principle that supports the case in 8 Modern, that any conspiracy to do a wrongful act tending to public injury, or the impoverishment of a third person, is indictable. But it is not on the authority of 8 Modern or the Tubwomen's case alone that the particular application of that principle is founded. In Hawk. b. 2, c. 26, (vol. 4. p. 85.) the author, speaking of informations and when they may be granted, recites among other offenses, 'conspiracies to impoverish a certain set of lawful trades;' and if

an information lies, inevitably an indictment will. In 12 Modern, 248, (case 427) *Anonymous*, leave was given to file an information against several plate button makers for combining by covenants, not to sell under a set rate. Per Holt, C. J. 'It is fit that confederacies by those of a trade to raise their rate, should be suppressed.' In Bolton's Justice (which the learned counsel has cited, and the authority and accuracy of which I willingly admit,) vol. 2, p. 16, it is laid down that any such conspiracy is an offense at common law, notwithstanding there are statutes to enable justice to fix those rates, and punish any exacting more. In Keb. 650 (the report of *Rex. v. Sterling*) it is laid down by Hyde, C. J., that the very conspiracy, without an overt act, to raise the price of pepper, is punishable, or of any other merchandise."

* * * "But even this position does not appear, according to some authorities, sufficiently accurate; for the very act of conspiracy is held to be itself unlawful, and the entering into it is using unlawful means to effect a purpose, and is therefore punishable whether that purpose be lawful or not. This doctrine is expressly laid down in the case so often and disrespectfully alluded to by the opposite counsel, that of *The King v. The Journeymen Taylors of Cambridge*. 'A conspiracy of any kind is illegal, although the matter about which they conspired might have been lawful for them, or any of them to do, if they had not conspired to do it.' In the same book, p. 321, the proposition is a little more qualified, though substantively the same: 'a bare conspiracy to do a lawful act to an unlawful end, is a crime, though no act be done in consequence thereof.' The position, however, in its fullest extent is recognized in the case already cited of *Rex. v. Eccles*. 'Conspiracy is the gist of the

charge; and even to do a thing which is lawful in itself, by conspiracy, is unlawful.' Taking the position of East, or either of those in 8 Mod. to be correct, the indictment is free from the objections urged against it on this ground."

The charge of the court was then delivered by his honor, the Mayor, to the following effect. He observed, "There were two points of view in which the offense of a conspiracy might be considered; the one where there existed a combination to do an act, unlawful in itself, to the prejudice of other persons; the other where the act done, or the object of it, was not unlawful, but unlawful means were used to accomplish it. As to the first, there would be no doubt that a combination to do an unlawful act was a conspiracy. The second depended on the common principle, that the goodness of the end would not justify improper means to obtain it. If, therefore, in the present case the defendants had confederated either to do an unlawful act, to the injury of others, or to make use of unlawful means to obtain their ends, they would be liable to the charge of a conspiracy. He observed that the court did not mean to say, nor did the facts in the case require them to decide, whether an agreement not to work, except for certain wages, would amount to this offense without any unlawful means taken to enforce it.

"Much has been said as to the application of the common law of England to the case. The absurdities of the ancient common law, and also of the statute law of England, had been exhibited in the strongest light. It was well-known that many of the ancient rules of the common law on this and other subjects had been exploded or become obsolete, and that little of the mass of absurdities complained of by the de-

fendants' counsel remained in force even in England. In this State the court could not be at a loss in deciding how far the common law of England was applicable. Our immediate ancestors claimed it as their birth-right. They considered it as securing to them many of their highest privileges and they often appealed to that law in support of their rights, and against the arbitrary extension of power by the British Parliament. The constitution of this State had also expressly adopted it and declared that such parts of the common law of England, and the statute law of England and Great Britain, and of the acts of the legislature of the colony of New York, as together, did form the law of said colony on the 19th April, 1775, and not repugnant to the constitution, should be and continue the law of this State, subject to such alterations and provisions as the legislature of this State from time to time should make concerning the same, &c. No alterations have been made by our constitution or laws; the common law of England, as it existed at the period last mentioned, must be deemed to be applicable, and by that law the principles already stated appeared to be well established. No precedents, it was true, of convictions or judgments upon them had been produced from our own courts, but no strong inference could be drawn from that, as until lately such precedents had not been preserved, and no printed reports of adjudged cases had been published.

“The injury produced by unlawful combinations might affect any person or number of persons, as in the present case the master-workman, or the fellow journeymen of the defendants, or any other individuals. It appeared in evidence that the society of journeymen, of which the defendants were members, had established a constitution, or certain rules for its

government, to which the defendants had assented, and which they had endeavored to enforce. These rules were made to operate on all the members of the society, on others of their trade who were not members and through them on the master-workmen and all were coerced to submit or else the members of the society, which comprehended the best workman in the city, were to stop the work of their employers. One of the regulations even required that every person of their trade, whom they thought worthy of notice, should become a member of the society, and of course become subject to its rules and in case of neglect or refusal it imposed fines on the person guilty of disobedience. When the society determined on any measure it found no difficulty in carrying it into execution. If its ordinary functions failed it enforced obedience by decreeing what was called a *strike* against a particular shop that had transgressed, or a general turn out against all the shops in the city, terms which had been explained by the witness and were sufficiently understood. These steps were generally decisive and compelled submission in all concerned.

“Whatever might be the motives of the defendants, or their object, the means thus employed were arbitrary and unlawful, and their having been directed against several individuals in the present case, it was brought, in the opinion of the court, within one of the descriptions of the offenses which had been given.”

The jury retired, and shortly after returned a verdict against the defendants.

The sentence was then passed by his honor the Mayor, who observed to the defendants, that the novelty of the case, and the general conduct of their body, composed of members useful in the community, inclined the Court to believe that they had erred

from a mistake of the law, and from supposing that they had rights upon which to found their proceedings. That they had equal rights with all other members of the community was undoubted, and they had also the right to meet and regulate their concerns, and to ask for wages, and to work or refuse; but that the means they used were of a nature too arbitrary and coercive, and which went to deprive their fellow-citizens of rights as precious as any they contended for. That the present object of the court was rather to admonish than to punish; but an adjudication upon the subject being now solemnly had, it was recommended to them so to alter and modify their rules and their conduct as not to incur in future the penalties of the law.

They were fined each one dollar, with the costs.

3. The Trial of the Pittsburgh Cordwainers.—Judge Roberts, who tried the case, said *inter alia*: “All confederacies wrongfully to prejudice another, are misdemeanors at common law, whether the intention is to injure his person, his property, or his character”—quoting from Chitty on Criminal Law—and charged the jury that the indictment was not to be regarded as a controversy between journeymen and their employers. “It is a prosecution to preserve the public peace, and protect your fellow-citizens in the quiet enjoyment of their property, and the uninterrupted pursuit of their lawful business. With the regulation of wages, or the profit of one or the other, you have nothing to do. It has been truly said, that every man has a right to affix what price he pleases on his labor. It is not for *demanding high prices* that these men are indicted, but for *employing unlawful means to extort* these prices, for using means prejudicial to the community.” * * *

“A conspiracy to compel an employer to have only a certain description of persons is indictable. It is a subversion of the liberty of the citizen. It has a direct tendency to restrain trade, and create a monopoly. A conspiracy to prevent a man from freely exercising his trade or profession, in a particular place, is indictable. In many cases of conspiracy, the means employed have the semblance of being lawful. They are frequently such as would be lawful in an individual. For instance, you have a right to have your boots, coat, or your hat made by whom you please. You may decline employing any particular shoemaker, tailor, or hatter, at your pleasure. You may advise your neighbors not to employ a particular mechanic. But should you combine and confederate with others, to ruin any particular shoemaker, tailor, or hatter, or other mechanic or tradesman, by preventing persons from employing him, this would be unlawful and indictable.

“Did they conspire to compel an employer to hire a certain description of persons? If they did, they are indictable. On this subject the evidence is equally clear. They did not indeed threaten to beat the employer, nor to burn his shop. But the means they used were more efficient and menaced them with a punishment more dreadful; no less than a total destruction of his trade, and the means of his subsistence. Did the defendants conspire to prevent a man from freely exercising his trade in a particular place? If so, they are indictable. Did they conspire to compel men to become members of a particular society, or to contribute towards it? If they did, they are indictable.” This case was tried in 1815.

4. The case of *Commonwealth v. Carlisle*¹ effected a change in the ruling on the subject of a conspiracy at

¹ Brightly's Rep. (Pa.) 36.

common law. The case was heard before Judge Gibson of the Supreme Court of Pennsylvania, on an application for a writ of *habeas corpus*. The facts briefly were, the defendants were master ladies' shoemakers and had been convicted of entering into a combination not to employ any journeymen except at a certain reduced rate, which, however, was the rate paid before the defendants had been compelled by a combination of journeymen to advance it.

In reference to the English rule he said: "In no book of authority has the precise point before me been decided. *Rex v. The Tailors of Cambridge* is found in a book (8 Mod. 10) which can claim nothing beyond the intrinsic evidence of reason and good sense apparent in the cases it contains. In the trial of the Boot and Shoemakers of Philadelphia, there was no general principle distinctly asserted, but the case was considered only in reference to its particular circumstances, and in these it materially differed from that now under consideration. And in the trial of the Journeymen Cordwainers of New York, the Mayor expressly omits to decide whether an agreement not to work, except for certain wages, would be indictable *per se*. There are, indeed, a variety of British precedents of indictments against journeymen for combining to raise their wages, and precedents rank next to decisions as evidence of the law; but it has been thought sound policy in England to put this class of the community under restrictions so severe, by the statutes that were never extended to this country, that we ought to pause before we adopt their law of conspiracy, as respects artizans, which may be said to have, in some measure, indirectly received its form from the pressure of positive enactment, and which,

therefore may be entirely unfitted to the condition and habits of the same class here." * * *

"The unsettled state of the law of conspiracy has arisen, as was justly remarked in the argument, from a gradual extension of the limits of the offense; each case having been decided on its own peculiar circumstances without reference to any pre-established principle. When a combination has for its direct object to do a criminal act, as to procure the conviction of an innocent man, (the only case originally indictable, and which afterwards served as a nucleus for the formation of the entire law on the subject) the mind at once pronounced it criminal. So, where the act was lawful, but the intention was to accomplish it by unlawful means, as where the conviction of a person, known to the conspirators to be guilty, was to be procured by any abuse of his right to a fair trial in the ordinary course. But when the crime became so far enlarged as to include cases where the act was not only lawful in the abstract, but was also to be accomplished exclusively by the use of lawful means, it is obvious that distinctions as complicated and various as the relative transactions of civil society become instantly involved; and to determine on the guilt or innocence of each of this class of cases, an examination of the nature and principles of the offense became necessary. This examination has not yet been very accurately made, for there is in the books an unusual want of precision in the terms used to describe the distinctive features of guilt or innocence. It is said that the union of persons in one common design is the gist of the offense; but that holds only in regard to a supposed question of the necessity of actual consummation of the act meditated; for if combination were, in every view, the essence of the crime, it would neces-

sarily impart criminality to the most laudable associations.

“It will, therefore, be perceived that the motive for combining, or, what is the same thing, the nature of the object to be attained as a consequence of the lawful act is, in this class of cases, the discriminative circumstance. Where the act is lawful for an individual, it can be the subject of a conspiracy, when done in concert, only where there is a direct intention that injury shall result from it, or where the object is to benefit the conspirators to the prejudice of the public or the oppression of individuals, and where such prejudice or oppression is the natural and necessary consequence. To give appropriate instances respectively referable to each branch of this classification of criminal intention:—if a number of persons should combine to establish a ferry, not from motives of public or private utility, but to ruin or injure the owner of a neighboring ferry, the wickedness of the motive would render the association criminal, although it is otherwise where capital is combined, not for the purpose of oppression, but fair competition with others of the same calling. So, with respect to the other branch: if the bakers of a town were to combine to hold up the article of bread, and by means of a scarcity thus produced, extort an exorbitant price for it, although the injury to the public would be only collateral to the object of the association, it would be indictable; and to one or other of these may the motive in every decided case be traced.

“Thus a combination to marry under feigned names was criminal, because the object was to affect the interest of a particular parish under the poor laws, or to injure an individual by setting up a colorable title to his estate. An agreement between the officers of an

army to throw up their commissions simultaneously in time of danger, between a number to hiss a play, right or wrong, was indictable, because there was an unmixed motive of mischief to the public or an individual. So, on the other hand, in a confederacy to raise the price of the funds, to sell bad liquors, to procure the release of a prisoner by entering insufficient bail, the motive is not prejudice to the public or an individual, but undue gain to the confederates or their friends; which is unlawful only in reference to the means used to procure it. I take it, then, a combination is criminal wherever the act to be done has a necessary tendency to prejudice the public, or individuals, by unjustly subjecting them to the power of the confederates, and giving effect to the purposes of the latter, whether of extortion or mischief. According to this view of the law a combination of employers to depress the wages of journeymen below what they would be if there was no recurrence to artificial means by either side, is criminal. There is between the different parts of the body politic a reciprocity of action on each other, which, like the action of antagonizing muscles in the natural body, not only prescribes to each its appropriate state and condition, but regulates the motions of the whole. The effort of an individual to disturb this equilibrium can never be perceptible, nor carry the operation of his interest on that of any other individual, beyond the limits of fair competition; but the increase of power by combination of means, being in geometrical proportion to the number concerned, an association may be able to give an impulse, not only oppressive to individuals, but mischievous to the public at large; and it is the employment of an engine so powerful and dangerous, that gives criminality to an act that would be perfectly innocent, at

least in a legal view, when done by an individual.

“A combination to resist oppression, not merely supposed but real, would be perfectly innocent; for where the act to be done and the means of accomplishing it are lawful, and the object to be attained is meritorious, combination is not conspiracy. It is a fair employment of means not criminal in the abstract, but only so when directed to the attainment of a criminal object; and it is therefore idle to say the law affords a remedy to which the parties must recur; the legal remedy is cumulative, and does not take away the preventive remedy by the act of the parties. It would be an assumption of the question to say it is criminal to do a lawful act by unlawful means, when the object must determine the character of the means. It must therefore be obvious that the point in this case is, whether the relators have been actuated by improper motives; and that being a question purely of fact I am bound to refer its decision to a jury, the constitutional tryers of it,” &c.

5. The trial of the Journeymen Tailors of Philadelphia¹ followed that of *Commonwealth v. Carlisle, supra*. The facts and questions of law arising are sufficiently set forth in the Recorder's charge to the jury, which is given in full.

“In a case of so much apparent, perhaps real difficulty, and as respects the nature of the offense and the number of the defendants so complicated, it is highly important to examine, in the first place, the indictment, and to have a clear and definite idea of the nature of the offense, before we inquire how far the mass of evidence we have heard, applies to the several defendants. The indictment contains eight counts,

¹ Pamphlet, stenographic report, out of print, and difficult to procure.

each charging a distinct offense, or being a different mode of describing the same offense. To several of these counts is annexed a description of the means by which the alleged conspiracy was to be carried into effect—these are termed specifications or overt acts. Omitting for the present the legal phraseology of this indictment, relieving it from the burthen of form with which it is cautiously but rather unnecessarily encumbered—it contains a charge of

“1. Conspiracy to raise their wages and promote their own interests as journeymen, and of course to lessen the profits and injure the interests of their employers, the master tailors.

“2. Conspiracy to compel their employers to reinstate certain persons, who had been discharged for demanding the wages they conceived themselves entitled to, but which Robb & Winebrener, in whose employ they had been, allege they had not agreed to pay.

“3. Conspiracy to injure, embarrass and obstruct Robb & Winebrener in their lawful business.

“4. A general conspiracy to injure and oppress certain journeymen tailors and master workmen, who were no parties to the original agreement, or of the general combination which is said to have existed.

“The means adopted are generally

“1. Desisting from work.

“2. Assembling in the street obstructing workmen in the employment of Robb & Winebrener—using threats and promises to induce them to leave it—pursuing one and assaulting and beating another, and sending a threatening letter to a third.

“This is the nature of the conspiracy charged in the indictment, with the means adopted to carry it into effect. Here it is proper to observe, that the agree-

ment between the parties is the gist of the offense; it is altogether immaterial whether any act be done in pursuance of it—and before I proceed further, I will add that the five persons first discharged by Robb & Winebrener, viz.: Radford, T. Hough, James Wilson, Skeggs and Scott, and the others, viz.: the two Moores, Mead, Conway, Crouse, Donnelly, Miller, McKeever, McMacken, Laboulles, L. H. Wilson, Beatty, Jonathan Hough and Page, who gave up their work, are they to whom the charge of conspiracy to raise the wages exclusively applies, and they, as well as the other six, except Fulse, are included in the charge of injuring and oppressing Robb & Winebrener and the other persons, in the manner stated in the 4th overt act to the first count, and in the 7th and 8th counts

“The offense, which in law is termed a conspiracy, is the associating, confederating and agreeing and often acting together to the accomplishment of an object, either in itself illegal or to be attained by illegal means. In deciding whether the agreement charged is either in morals or law a crime, we must inquire (taking it for granted, what in this case cannot be denied), that a combination did exist among these defendants, or some of them: 1st, its nature, 2nd, the means used to accomplish it, and 3rd, the object to be attained.

“There are two points of view in which the offense of conspiracy may be considered; the one where there exists a combination to do an act unlawful in itself to the injury of an individual, or of the public, taking the term prejudice as applicable to an individual with some qualification, as will be shown hereafter, and not considering it as meaning an injury to the pecuniary interest of another, which may be easily and innocently, and to the public, often advantageously

effected, by that personal injury, which results from the depression of the price of labor by successful competition by others in the same occupation, or from other obvious and natural causes; not considered as that kind of injury or prejudice (to adopt the language of the defendants) which a man suffers when he is disappointed in a good bargain or profitable contract, or does not derive the same profit, the usual gain, and often artificial advance on his skill and labor on which he had calculated, either from a monopoly secured, or from other causes which he had supposed were exclusively within his own control. In some cases the term is wrongfully to injure or prejudice a third person, which cannot be presumed to mean from any of the causes just stated; in some it is said a conspiracy to ruin a particular person, &c. This is one point of view in which the offense may be considered. The other is when the act done, or the object of it was not unlawful, but unlawful means were used to accomplish it; which depends on the common principle, that the goodness of the end will not justify improper means to attain it. If, therefore, the defendants have confederated either to do an unlawful act, wrongfully to injure others, (always using that term in a qualified sense) or to make use of unlawful means to attain it, they would be liable to the charge of conspiracy; and when I use the word, I beg the jury not to be led away by high sounding terms which seem to convey much more than is intended; and here also I will say once for all, that by the term conspiracy, nothing more is meant than unlawful agreement.

“It is said by Judge Gibson in the case of the indictment against the master shoemakers, who, it seems, were accused of a conspiracy against the

journeymen, that the precise point whether an agreement not to work except for certain wages, or what is the same thing, not to employ any journeymen who would not work for wages fixed by the employers, had not at that time (1821) been decided even in England to be unlawful, and in this he seems to be confirmed by the latest and certainly the best book on Criminal Law in England, Russel on Crimes, 2 vol., 1801, in which it is said in many cases an agreement to do a certain thing has been considered as the subject of an 'indictment for a conspiracy, though the act, if done separately by each individual, without any agreement amongst themselves, would not have been illegal; as in the case of the journeymen conspiring to raise their wages; each may insist on raising his wages if he can; but if several meet for the same purpose it is illegal, and the parties may be indicted for a conspiracy. It has been said that perhaps few things are left so doubtful in the criminal law as the point at which a combination of several persons in a common object, becomes illegal. It appears, however, to have been holden that if such persons illegally concur in doing an act, they may be guilty of conspiracy, though they were not previously acquainted with each.'

"There is something qualified and guarded in the language used, in addition to the express declaration that it is doubtful at what point combination becomes conspiracy, the terms 'it has been considered,' 'it has been said, &c.,' imply doubt, even in England, and in the United States, I am inclined to think, on the authority referred to, that in no case has the law been settled to the extent contended for by the prosecution. In the latest decided case, Judge Gibson informs us that none of the prior decisions, beginning

with the one decided in this Court by the late Recorder, nor the one in New York, or the last in Pittsburgh, go the length in support of the general principle on which this prosecution is founded. None of these were analogous, as will appear hereafter, to the present. The one decided by Justice Gibson being the last. I feel bound to take the law from it in preference to the prior cases, not only because it is the latest, but because I consider it to contain the opinion of an eminent judge, who has since attained the highest Court of this State, from which all inferior tribunals within it are bound to take the law. Resting, therefore, on this respectable authority, I am disposed to give the law of conspiracy a more liberal construction—to leave every man in the community to exercise his faculties to regulate his conduct with as little restraint as possible, provided he permits others to do the same. I cannot accept the law as it is said to have been decided in England, for the same reasons already stated; nor can I accede to it as laid down by Judge Roberts, at Pittsburgh, when he says, ‘that when divers persons confederate by indirect means to prejudice a third person (terms certainly very vague and indefinite), it is a conspiracy. A master workman may be prejudiced in a variety of ways, which no one would pretend was indictable; he may be prejudiced by not receiving his accustomed profits, by others entering into competition with him, by which the public interest, instead of being injured, would be promoted, although the individual may be prejudiced in the manner described.’ The law is, in my opinion, correctly laid down by Judge Gibson, when he says, a combination is criminal when it exists ‘to depress (as in the case before him,) the price of wages below what they would be if there was no recurrence to arti-

ficial means on either side.' By artificial means, I cannot suppose he intended an agreement among the parties themselves, not to work for less wages than they had agreed to accept, especially when he says, that in the New York case, the mayor expressly omits to decide whether such an agreement is indictable *per se*. I hope I am not understood as commending the course pursued by the defendants; on the contrary, I condemn it as the height of folly and imprudence, and more injurious to themselves than it possibly can be to others. If there was an agreement among the journeymen to operate on the parties, on innocent third persons, not privy to the original contract, disclaiming its fancied benefits, and unwillingly to incur its perils, such an agreement would no doubt be criminal, especially if carried into execution. The nature of the original agreement between the parties, as admitted by both, was unquestionably fair, whether really or essentially beneficial to the journeymen or employer, is not now the question. It may be reasonably doubted whether such agreements do not, on the whole, work more injury than good—whether, in all cases, it would not be better to permit labor to be operated upon and regulated by natural and not artificial causes—to permit every man to work at his own prices—to make his own contracts—and thus promote competition, by which the public, as well as the individual, would eventually be benefited. As between the parties, however, to this agreement regulating prices, it was no doubt perfectly legal; its object, ostensibly at least, was to protect the interests and assert the rights of the journeymen against oppression, real or supposed, of the master tailors—to do by joint and united efforts, what it was supposed could not be effected by individual exertion—to secure certain

wages mutually agreed on, and which we may infer, the parties considered fair and equally advantageous to both, by producing a permanence and uniformity of prices. This agreement, it is contended, secured to the journeymen a fair and reasonable remuneration for his labor, while it also enabled the master workmen to derive a just profit on the skill and capital bestowed on and invested in the material on which they were both employed. This was the nature of the agreement, and to carry it into effect was, as the journeymen maintained, all that they contended for. On the part of the prosecution it is admitted that the agreement as to prices existed, the table of which was to regulate both; that while they were willing, and in all particulars had adhered to it, the defendants, by a combination among themselves, attempted to extort, and in one instance actually obtained more than under the implied contract, as existing in the bill of prices, they were entitled to. If there was a mere difference of opinion between the journeymen and their employers, as to the construction of the contract, and the parties to it had refused, the one to work and the other to employ, I am not prepared to say that an agreement to that effect in either, provided it did not extend beyond themselves, would be legal; a violation of the contract might be the subject of a civil action, but not of a criminal charge; I consider, therefore, that the conspiracy without the overt act charged in the first count of the indictment, is not criminal, provided no other means were used than an agreement not to work; this leads me to a consideration of the overt acts or the means taken to carry the alleged conspiracy into effect, the first of which is threatening to leave the service of Robb & Winebrener unless they would agree to pay the wages demanded and reinstate the

men who had been discharged. On the difference of opinion as to the prices, I have already said, that the defendants had as much right to leave the service of their employers, as the employers had to discharge them, a right which was claimed and exercised. It cannot be contended that a man in a free country may be compelled to work at other wages than he considers himself entitled to; so undoubted does this right appear that no combination or agreement, however extensive, is illegal, provided, let it be borne in mind, no illegal means be employed, nor the rights and interests of other persons, not parties thereto, be invaded or effected. This rule I consider to be in accordance with the principles of strict practice, and not at all impaired by the authority of any of the cases cited. It follows, therefore, under this qualification, that neither the conspiracy charged in this count, nor the means taken by the alleged overt act to effect it, are illegal.

“The 2nd overt act is leaving the service of Robb & Winebrener, unless they would re-employ the five men, who had been discharged. As to the legality of this act, although at first view it would seem as unreasonable to compel the employer to retain a man whom he chose to discharge, as to compel the journeymen to remain contrary to his wishes, yet as it was only under pain of leaving the service of Robb & Winebrener, and that for a difference of opinion as to the construction of the bill of prices, which might reasonably and conscientiously be entertained without any imputation of guilt, I can discover nothing here to constitute a legal crime. As well might any master tailor, if associated with Robb & Winebrener, or even Robb & Winebrener themselves, be convicted of a conspiracy against the journeymen for turning them

away, because there must be an agreement to that effect. If the journeymen really and conscientiously, though erroneously, thought that their friends were injured or oppressed by their employers—that they had a right to the wages claimed—there is no legal objection, nothing certainly constituting an indictable offense, in their withholding their own services, until what they considered justice was done their associates. If they had the right individually, I can see no reason why the same right might not be exercised by them collectively and simultaneously, nor can I conceive a case where, if the object be legal, that which is done by one, becomes illegal only when done by many, provided the means are not criminal. Judge Gibson says: ‘the motive may also be important to avoid or induce an inference of criminality. The mere act of combining to change the price of labor is perhaps evidence of impropriety of intention, but not conclusive, for if the accused can show that the object was not to give an undue value to labor, but to foil their antagonists in an attempt to assign to it by surreptitious means, a value which it otherwise would not have, they will make out a good defense.’ In the Shoemakers’ case in this city, the Recorder, Mr. Levy, instructed the jury ‘that it was no matter what the defendants’ motives were, whether to resist supposed oppression, or to insist on extravagant wages, but there, the rule as applied to that case, where the combination was intended to coerce, not only the employers, but also third persons, is not of universal application. A combination to resist oppression, not only supposed but real, would be perfectly innocent; where the act to be done, and the means to accomplish are lawful, and the object to be attained meritorious, combination is not conspiracy.’ What on this occasion

were the consequences resulting from the acts of the defendants? How are the rights and the interests of the public affected? The work is not done; the employers are put to great inconvenience; their customers are disappointed; and what is not the least evil, the journeymen who confederate remain idle, useless, for a time at least, to their families, and unprofitable members of society. The employers may have, and on this occasion actually had their suit for damages; but beyond this, I cannot discern what are the consequences, either to the parties or to others, nor how the community is affected, certainly no more than any breach of contract, between individuals, I say nothing here as to the rules of the society of journeymen tailors, which, so far as we have had an opportunity of judging, are, in some respects, illegal and oppressive, operating not only on the members, but on others; because theirs is not charged as one of the overt acts by means of which the conspiracy was to have been effected. If it had been, the case would have come within the rule. It is sufficient for the purposes of the defense, that the agency of the society is not the means alleged to have been used. So far, therefore, as respects the conspiracy stated in the first count, and the overt acts, by which it was to be effected, I am not prepared to say that it constitutes an indictable offense. Here I wish to be distinctly understood as confining my observation to the charge as contained in the indictment. If it could be shown that the society had interposed by all the means in their power to compel Robb & Winebrenner to re-employ the men discharged, it certainly would present a very different case, on which it is unnecessary to give an opinion; it would then be the same in principle as the one formerly decided here, in New York, and

Pittsburgh, where the defendants were all charged as members of associations the constitutions and by-laws of which became the subjects of legal investigation and adjudication. It would have been better if such had been the case on the present occasion, the root of the evil would then have been struck, or at all events the real legal merits of the case discussed, because it must, I think, be evident, on the testimony, that on this occasion whatever was done by the defendants proceeded from the association of journeyman tailors.

“The third overt act of the first count, viz: assembling near the store of Robb & Winebrener, intercepting their workmen, &c., may or may not, according to circumstances, be an illegal act, it is not charged to have been done wrongfully or unlawfully, and, therefore, we are not to presume it to be so, but this part of the charge is not material, inasmuch as there are other acts in the same count, which in my opinion amount to an indictable offense. The treatment of Chamberlain and the assault on Shields (whether proved or not, is for you to decide) are illegal acts. The first is charged to have been done in a turbulent and disorderly manner, and if three were engaged in it, it amounts to a riot, and might have been so charged. This is, therefore, an illegal act, by means of which the object of the conspiracy was to be effected, of both of which you must, however, judge on the evidence.

“The fourth overt act is holding correspondence with, and by promises and threats endeavoring to induce certain workmen to leave the service of Robb & Winebrener, sending a threatening letter to Kline of which, as there is no evidence, it is unnecessary to speak. The other facts constituting this overt act tended not only to effect Robb & Winebrener, but other persons,

master workmen, but more especially journeymen, who neither complained nor had cause of complaint, who alleged no injustice, and who were satisfied and agreed to work for the prices offered by the employers, to compel these men to demand what they were conscious of not deserving—to compel them perhaps in the decline of life, willing and anxious to work and support their families, either to live in idleness and be supported by a kind of charity, or be exposed to all the indignity and suffering which the many when combined, can always inflict on the few, and which in this case were actually unmarried men, as the defendants or some of them probably are, unrestrained by the care of a family, active and capable, in the prime and vigor of life, at the head of their professions, who can come and go, and command the highest wages, to tyrannize over and oppress others with families and less ability to support them, cannot have the semblance of law or reason; to conspire to do so is undoubtedly a criminal offense. These young men have an undoubted right, by agreement among themselves to regulate their own conduct, to ask as much as they please for their services, to continue or to leave the service of any employer, as reason, inclination, or caprice should dictate; but the moment they interfere with the rights and privileges of others, equally valuable and sacred as those which, in this prosecution, these defendants so jealously contend for, they are criminals, and if the means employed be combination they become conspirators. If it were otherwise, it must, I think, be manifest to you that there would be injustice done, and cases of individual suffering frequently occur, which considered as a public offense, ought not to pass unredressed and unpunished. The old and infirm would be placed in

the power of the young and healthy; the one might be enjoying comforts and even his pleasures, while the other could scarce give bread to his family, partial and temporary as it necessarily must be. No fund, no treasury, could long support its members in idleness, who to accomplish their objects must be numerous. The means would soon fail. So far, therefore, as these defendants by combination attempted to injure and oppress others, more especially their fellow journeymen, (I say here nothing of the interests of Robb & Winebrener) such acts are criminal; and if proved will be subject to the penalties of the law. The act charged in this indictment is clearly illegal, and of course, under the most favorable construction which can be given to the law of conspiracy, any combination to effect it will be indictable.

“As I consider this the most important charge, and by far the most exceptional and illegal part of the defendant’s conduct, I request you to inquire whether it is supported by the evidence and in so doing, you must lay out of view entirely, the interests of the employers, and consider how far other journeymen, and through them, the public are affected. Of this the defendants professing to advocate the rights of the journeymen, and formed into a society for that purpose, will have no reason to complain. As the 7th and 8th counts contain charges of a similar kind, or the very same offense variously described, it may be as well to consider them in connection with this, that is, offenses more immediately against their fellow journeymen who are willing to work without being accountable for their actions to others or to the arbitrary rules of any individuals or society to which they do not, and have no desire to belong.

“The 2d count charges a conspiracy to augment the wages, and the 3d to compel Robb & Winebrener to employ the discharged men. The observations already made apply to these charges, viz: that if there was a difference of opinion on the construction of the bill of prices, there could be no offense in agreeing to abstain from work until they obtained the wages contended for, or until others who they thought were unjustly discharged, were again taken into employment. If no other consequences were intended to follow than leaving off work, and no illegal means adopted—if the rights of other journeymen were not affected—there is in my opinion no crime. The first overt act to the 3d count, viz: threatening to leave off work unless Radford and others were re-employed, is liable to the same objection. The 2d overt act corresponds to the 3d overt act in the 1st count. I pass over all the other charges as contained in the 4th, 5th and 6th counts, with the several overt acts, as they are but different modes of charging the offenses contained in the preceding counts, and they affected only the interests of Robb & Winebrener.

“To the 7th and 8th counts the first with, and the 2d without an overt act, I have already directed your attention. I consider them, for the reasons already mentioned, as more important than others; more important because they contain charges on conspiracy by which the rights of not only other journeymen tailors, but other master tailors, viz. Jewell, Mahan, &c., in the employment of Robb & Winebrener, were affected.

“It must have become obvious to you, gentlemen, that it is my wish to direct your attention to the sole inquiry, how far the combination charged and the overt acts are calculated to affect the rights of inno-

cent third persons. This is all the case requires. It is unnecessary to go out of our way to examine the question as to the right to combine to raise wages; which has never been decided on in the United States, and for this I have the authority of the present Chief Justice of the State; what then are the facts from which the design of the parties by conspiracy to affect the rights and interests of others is to be inferred? First, as to the fellow journeymen, and then as to the master workmen, who were called on to perform work on the application of Robb & Winebrener, after they had lost the services of the defendants and others, who had been seduced or compelled to leave their service. To begin with the evidence of Mr. Winebrener, after the five journeymen had refused to accept the offered price, and been subsequently discharged, and the fourteen others had thrown up their work, and after they had been sued before Alderman Binns, which was on the following day, they remained, as Mr. Winebrener says, in squads in the street day to day following to his destination every person who left the house with work to ascertain who occupied their places and accepted work which they had refused. If this assemblage, following in the street, and other of the numerous facts given in evidence, and so recently and fully stated, had for their object to ascertain who worked for Robb & Winebrener, and then, by the means particularly stated in the indictment, to punish them for so doing—for gaining an honest living, and Robb & Winebrener for enabling them to earn it, it is unnecessary to say to you that this constitutes an offense—an act of oppression and injustice to individuals who have had no part in the controversy, and no other view, so far as we know, but earning a support for themselves and their families. I do not go into

all the evidence on this point because it has been recently and forcibly detailed to you by counsel. I cannot, however, omit alluding to the proceedings of the society, respecting which I must say, though they are not alluded to in the indictment, that if a meeting was held with a view to prevent work being done by journeymen, or in the shops of Jewell, Campbell, &c., it would be evidence of a conspiracy to that effect. There is no doubt an effect was produced of a most distinctive character by the same cause, for no work was or could be done while work from Robb & Winebrener was in their shops.

“To the point stated, and the evidence in support of it, I advise you to direct your attention. To do more would perhaps embarrass you; at all events it is unnecessary when you come to decide this case; to adopt more than one of the questions suggested to the jury by Judge Roberts; ask yourselves, did defendants prevent the undoubted right, which every man has to employ his faculties, and engage his labors in any manner, and in the service of whomsoever he thinks proper? Rejecting that vague question, which the same judge, in my opinion, rather unnecessarily introduced, viz. did the defendants confederate by indirect means to prejudice a third person? I consider this a vague question, which no jury can answer satisfactorily, because they do not exactly know what is the precise legal meaning of the term; *indirect* does not always mean illegally to prejudice; it may be, as already stated, by means not only legal but commendable.

“You now have this case before you, and must decide it on the law and evidence. I need not repeat the only question which I think you are required to decide. It is important not only as affecting the immediate parties,

but other masters and journeymen, and the community at large. I conclude with the words of the respectable judge I have just referred to: 'If the journeymen have a right to combine, the master workmen might do it. The absurdity and inconvenience of sanctioning such a doctrine is too apparent to require a comment. Combinations amongst master workmen, in any of the mechanical arts, tending to create a monopoly, or to restrain the entire freedom of trade, would be equally reprehensible with those under consideration. Indeed in such cases the combinations are no less prejudicial to many of the individuals composing them, than to the public. They may afford a monopoly to few of those concerned; persons whose characters as workmen and as substantial men, are established, will benefit by such associations, whilst the young mechanic and the stranger, whose talents are unknown, the moment they become members of such associations, under the specious name of master workmen, they in fact enter into a state of vassalage; they almost inevitably become the journeymen and dependents of the other class. Whereas if they were at liberty to make their own contracts, and work at their own prices, opportunity would be afforded to display their skill and capacity as mechanics, and they would thus have a fair chance of placing themselves at the head of their profession or trade. In the character of journeyman, whatever skill and taste their work may display is usually placed to the credit of the master.'"

6. *People v. Fisher*,¹ decided in 1835, comes next. This case deserves special attention for the reason that it is really the first case growing out of a strike, that was decided in this country by an appellate court

¹ *People v. Fisher*, 14 Wendell, (N. Y.) 9. (1835.)

of last resort, and therefore is the first authoritative decision on the subject. It is true that the case of the *Commonwealth v. Carlisle* was heard by Judge Gibson of the Supreme Court of Pennsylvania, yet the hearing was simply on the application for writ of *habeas corpus*, before a single judge and not before the Supreme Court of Pennsylvania. The only question in that case was whether the defendants were unlawfully restrained of their liberty. The judge admitted that he had not constitutional authority to decide or pass upon the facts in the case, and remanded it for trial before a jury to determine the facts. After the case was remanded there is no further record of it, and what became of it finally is not known. Further, Judge Gibson substantially admitted that he had travelled out of the record to read the parties a lecture and in reality the most that he said was *obiter*. It is likely, however, that what he said was acted on in the court below as an intimation as to how he would decide if the questions of fact and law got before him properly. But the case of the *People v. Fisher* went up in regular course on writ of error to what was at that time the highest appellate court in the State of New York. This is also the case upon which the judge in the case of the *Master Stevedores*, a subordinate court, made such an onslaught in the preceding section. The indictment was under a statute of the State of New York making it a misdemeanor to enter into a conspiracy in restraint of trade. As the prosecution was under a statute it is difficult to see what the common law had to do with it. But both counsel and the court wandered off into a discussion of the common law rule, and while the discussion was not germane to the point at issue, yet it serves as proof of the individual opinions of distinguished lawyers. The indict-

ment was in four counts and alleged substantially that the defendants being journeymen shoemakers, together with divers other shoemakers to the grand jury unknown, did unlawfully unite themselves into an unlawful club and combination and conspired together to prevent any journeyman boot and shoemaker in the village of Geneva, in the State of New York, from working at his trade and occupation below certain rates and prices fixed by the defendants and their confederates to the injury of trade in the State of New York; and in pursuance of their said conspiracy, they ordained certain unlawful and arbitrary by-laws, rules, orders and constitutions, for the purpose of unlawfully regulating themselves and other journeymen shoemakers engaged in the trade of boot and shoe making at Geneva; for conspiring to extort from master shoemakers large sums of money by compelling them to pay one dollar per pair for making men's coarse boots, and that if any journeyman shoemaker made coarse boots for a less price he should forfeit and pay to the club or association a penalty of ten dollars; and that they would not work for any master shoemaker who should employ any journeyman who infringed or broke any of their said by-laws, &c., unless the journeyman offending paid the fine assessed against him.

The facts were, a shoemaker by the name of Thomas J. Pennock, in the employ of Daniel L. Lum, a master shoemaker at Geneva, broke one of the by-laws of said association by making men's coarse boots at seventy-five cents per pair, and refused to pay the penalty of ten dollars; that after this Lum continued to employ him, whereupon the defendants, in pursuance of their conspiracy abandoned the service of Lum.

A demurrer by the defendants to the indictment

was sustained, and the district attorney sued out a writ of error.

The contention was whether on the indictment and the facts the case came within the New York statute. There was another point raised on a plea of abatement, but it cuts no figure in the subject of this work. The district attorney in the course of his argument said, "conspiracies to control the price of labor, or the products thereof are misdemeanors at common law," and cited among other authorities, the case of the Journeymen Tailors of Cambridge, 8 Modern 10. He also referred to the Journeymen Cordwainers' case heretofore mentioned, and this is all, so far as the report of the case shows, that was said by prosecution to call for any reference to the common law rule "that a mere conspiracy to do a lawful act in an unlawful manner was indictable."

The counsel for the defense contended that the case did not come within the statute, and combatted the common law rule as laid down in 8 Modern. "A mere agreement, without some act done in pursuance of it, is not a conspiracy. A conspiracy therefore cannot exist by the mere refraining, omitting, or refusing to do an act." * * * "The subject matter of the conspiracy here is merely the price of making men's coarse boots, and the consummation alleged is the refusal &c. The allegations in the indictment that the defendants conspired to prevent journeymen, &c., from making boots and shoes below certain prices, and to extort from master workmen, and to injure trade, &c., are the statements of legal inferences merely, or are at all events qualified by and limited to the mode charged; and do not *per se* constitute a substantive ground of indictment."

"The course of proceeding contemplated by the

defendants was not 'injurious to trade or commerce' within the meaning of the statute. It is not within the words of the act; the expressions 'trade or commerce' are synonymous, and do not refer to the mechanic arts; consequently do not embrace this case. It is not within the spirit of the act. The act could never have been intended to apply to a controversy between master and journeymen mechanics, as to the price of making some particular article, the agreement as to which is the gist of the indictment in this case. The words of the act can be fully satisfied without extending them to this case.

"The end conspired to be attained and the means conspired to attain it, must be alike unlawful. It is denied in this case that either the end or the means was lawful."

It will thus be seen that the lines were sharply drawn as to whether the case came within the statute. The court met the issue thus presented and held that it did fall within the statute.

Chief Justice Savage, in deciding the case said: "The only question, therefore, is the one decided by the court below, whether the offense charged is indictable.

"The legislatures have given us their definition of conspiracies, and abrogated the common law on the subject. We must therefore see whether this case comes within the statute. The legislatures have said, 'If two or more persons shall conspire, either 1, to commit any offense; or 2, falsely and maliciously to indict another person for any offense, or to procure another to be charged or arrested for any such offense; or 3, falsely to move to maintain any suit; or 4, to cheat and defraud any person of any property by any means which are in themselves criminal; 5, to cheat

and defraud any person of any property by any means which if executed would amount to a cheat, or to obtaining money or property by false pretences; or 6, *to commit any act injurious to the public health, to public morals, or to trade or commerce*; or the perversion or obstruction of justice or the due administration of the laws, they shall be deemed guilty of a misdemeanor.' 2 R. S., 691, § 8; and in section 9 it is declared that 'no conspiracies other than such as are enumerated in the last section, are punishable criminally.' If the conspiracy charged in the indictment is an offense under this statute, it must be embraced under the sixth subdivision, and *is an act injurious to trade or commerce*.

"The conspiracy in this case was not to commit an offense within the meaning of the statute; the raising of wages is no offense—the conspiracy is the offense, if any has been committed. Nor was it the object to indict anyone; to move or maintain a suit; to cheat any one by criminal means, or by any means which, if executed, would amount to a cheat; nor to obstruct the course of justice or the administration of the laws.

"The question therefore, is a conspiracy to raise the wages of journeymen shoemakers an act injurious to trade or commerce?"

He then defines "trade" and "commerce," and proceeds to argue that the offense charged in the indictment came within the statute as being in restraint of trade. He said "that the raising of wages and a conspiracy, confederacy or mutual agreement among journeymen for that purpose is a matter of public concern, and in which the public have a deep interest, there can be no doubt. That it was an indictable offense at common law is established. by

legal adjudications. In *The King v. Journeymen Tailors of Cambridge*, 8 Modern, 11, the defendants were indicted for a conspiracy among themselves to raise their wages; they were found guilty, and moved in arrest among other things, that no crime appeared upon the face of the indictment. To this the Court answered, that it is true that the indictment sets forth that the defendants denied [declined] to work under such wages as they demanded, but it was not for denial, but for conspiracy they were indicted; and the court added that a conspiracy of any kind is illegal, though the matter about which they conspired might have been lawful for them or any of them to do without a conspiracy, and they refer to the case of *The Tubwomen v. The Brewers of London*. This case has been cited as sound law by all subsequent writers on criminal law."

It will thus be seen that all Chief Justice Savage said about the common law rule and the case in 8 Modern, was simply by way of illustration and argument. The question was not involved in the case. But as a naked proposition of law there can be no question but that he was right. The authorities are too numerous and too respectable to endeavor to ignore the fact.

7. *People v. Trequier*,¹ (1823) "The defendants, who are journeymen hatters, were indicted for being persons of evil minds and dispositions on the twentieth day of our Lord, one thousand eight hundred and twenty-two, with force and arms, did conspire and combine, confederate and agree together, to prevent and hinder one Daniel Acker from being employed in his business as a hatter, and to cause him, the said

¹ *The People v. Trequier*, 1 Wheeler's Crim. Cases, 142.

Daniel Acker, to be discharged from his employment as a hatter," &c.

2d. Count. "That the said Henry Trequier, Lewis Chamberlain and James Clawsey did cause and procure the said Daniel Acker to be discharged from his employment."

3d. Count. "That the said Henry Trequier, Lewis Chamberlain and James Clawsey did unlawfully conspire, combine and confederate and agree together, &c., that they would not, nor would either of them work for or be employed by any master hatter who had in his service any workmen or journeymen engaged in the said art, who had not agreed to certain rules adopted by the said Henry, Lewis and James."

4th. Count. "That the said Henry Trequier, Lewis Chamberlain and James Clawsey in pursuance of the said conspiracy, combination, confederacy and agreement between the said Henry, Lewis and James, and divers others to the jury unknown, so as aforesaid, the said Henry, Lewis and James, afterwards, to-wit., on the said 20th day of November in the year aforesaid, did respectively refuse to work for Jager and Haines, hatters, unless they, the said Jager and Haines, would discharge one Daniel Acker, then in their employment, the said Daniel Acker not having agreed and subscribed to certain rules and regulations made and entered into by the said Henry, Lewis and James."

5th. Count. "That the said Henry Trequier, Lewis Chamberlain and James Clawsey unlawfully and wickedly did conspire, combine, confederate and agree together to injure and aggrieve one Daniel Acker, and to deprive him of the means of living."

6th. Count. "That the said Henry Trequier, Lewis Chamberlain and James Clawsey did by indirect and

unlawful means injure and aggrieve the said Daniel Acker., &c.”

“The facts of the case appeared by the testimony of the prosecutor and Mr. Haines, of the house of Jager and Haines, that the prosecutor was a hatter, and employed by them in manufacturing hats; that he had worked for them in the summer, and had left the establishment in consequence of fever, and a few days before the general return of the inhabitants to the city, the prosecutor returned to their employment.

“It further appeared by the testimony that the prosecutor had served a regular apprenticeship to the business of making hats, and was a good workman although ‘not of the first order:’ that he was a young man of industrious habits, and had a family to support by his labor.

“It also appeared that the master hatters of the city had a meeting, and, in the language of the witness, ‘had knocked down the wages:’ to counteract this agreement among the employers, the journeymen had formed a society and had agreed not to work under a certain price.

“A few days after the prosecutor had joined the employment of Jager and Haines, after the fever, the defendants came to work for the same house, and objected to Mr. Haines to work in company with the prosecutor, alleging he was not a member of the society of journeymen hatters, and that he worked for ‘knocked down wages.’ They objected severally, at different times, but at one time at least, they all together objected to work in the same shop with him. Mr. Haines replied that he would put the prosecutor upon different work and in another room, which he did, in order to satisfy them; but they finally refused

and objected to his being employed in the same factory with themselves at all.

“Mr. Haines was desirous to employ the prosecutor, and advised him to apply to be admitted a member of the society; he did apply, and attended the meeting of the society on the three Monday evenings following. The defendants were there, but he was refused to be admitted, and was told that a committee would be appointed to inquire of Mr. Haines if he did not work under the regular prices.

“Chamberlain came into the shop where the prosecutor was at work, and began to ‘blackguard’ him, using rough and threatening language. The prosecutor replied he did not wish to be abused and insulted; that he was working for an honest living, and at a fair price, and that he was not working for ‘knocked-down wages.’

“It further appeared from the testimony of Mr. Haines, that he had constant employment for the prosecutor; that he discharged him solely because his other journeymen refused to work with him; that the prosecutor did not work for lower wages than the other journeymen he employed.

“It was also proved that after the prosecutor was discharged from the employment of Jager & Haines, he was for some time without any employment at all, but that since, he has obtained some little to do; and that before he was discharged, he offered to leave the employment of Jager & Haines, if the society would pay him for the time he had lost.”

Upon these facts being made out, Maxwell, district attorney, and D. Graham, rested the case.

Price. [Counsel for defendants] offered to prove a conspiracy among the master hatters not to employ any journeyman who left his last place on account

of wages, in order to prove that the meeting of the journeymen hatters was for a lawful purpose, and therefore not a conspiracy. The court overruled the evidence, and decided that however objectionable the association and agreement of the employers were, it could not justify the unlawful acts of the journeymen, and refused to hear the evidence."

* * * * *

By the Court. — "Gentlemen of the jury, Henry Trequier, James Clawsey, and Lewis Chamberlain, are indicted for a conspiracy.

"A conspiracy has been defined to be an agreement or combination between two or more persons to do an unlawful act, or to accomplish a purpose lawful in itself, by means that are criminal or unlawful. It is now the most usual remedy for any unlawful combination. The cases put by the counsel for the defendants do not apply to the present case. The meeting of the grocers and others was for a lawful purpose; it was, or it was supposed to be for the general advantage of the community. The object of their association was not directed to the injury or ruin of any one individual. In the case now before [the] court, it appears the object of the conspiracy was directed to the prosecutor alone. They not only remonstrated against his being employed in the same establishment with themselves, but carried their combination to so great an extent as to leave his business.

"The counsel for the defendants contended that the meeting of the master hatters compelled the association among the journeymen to counteract what he called the unwarrantable measures there adopted; that it was an association among the journeymen, in measure compelled on the part of the masters. It may be answered that one conspiracy cannot justify an-

other; that however objectionable the conduct of the master hatters may be it is certain that it furnishes no excuse to the defendants.'"

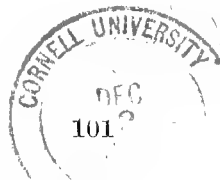
The court left it to the jury to say whether the acts of the defendants amounted to a conspiracy or not.

The jury immediately returned a verdict of guilty against each of the defendants.

8. Review of the Cases.—The only contention in the cases cited in this and the preceding section is as to whether the mere agreement among workmen to quit their employment simultaneously for the purpose of compelling an increase of wages, is an indictable conspiracy at common law. This is an important question, for if such is the common law, then it is the law of such states of our Union as have no other on the subject. The opposition to this rule is based on the right of workmen, as well as of other persons, to bestow their labor or services wherever and whenever they please. As a mere ethical abstraction that is probably correct, but as a matter of both fact and law there is nothing in it. The history of labor from the earliest time shows that workmen had practically no rights at all, and it will appear in the following section that the working classes in England were controlled down to a comparatively recent date, not only by harsh but cruel laws, which not only fixed his wages but expressly made it unlawful for a servant to leave his master. Therefore it is not astonishing, in the light of this history, that the common law made a mere conspiracy criminal. The two classes, capitalists or property owners and workingmen, occupied to a certain extent hostile attitudes towards each other, the one as superiors and the other as inferiors and subordinates. It would be the most natural thing in the world, that

the law, which had always discriminated against the working class, should look upon combinations among workmen against their masters, as a sort of treason, and seize upon conspiracies in their incipient stages. Further it must be confessed that there is something in the sound of the word conspiracy that is suggestive of mischief. The mention of the word instantly directs the thoughts to something wrongful or criminal. No one ever has and probably ever will hear the word conspiracy applied to a combination to do something good and worthy. Then again, common experience taught everyone that whenever there was trouble or disagreement between employer and employe, mischief was always intended and pretty surely followed. From the earliest times it has been the policy of the law to punish *attempts* to commit offences, and modern legislation proves that that doctrine is being steadily extended instead of curtailed. Therefore the rule that a conspiracy, for any purpose, and no matter if nothing was done to carry it out, was criminal, was perfectly consistent with the philosophy and history of the times when the doctrine had its origin. There is a great deal that is sophistical in the oft-repeated assertions that workmen have the right at their pleasure to quit their employment. No such right existed when the English courts announced the common law of conspiracy. In the exercise of their legislative authority, and all courts do exercise, of necessity, such authority, they intended to meet certain conditions of society as they then existed. Statutory law, history, legend and tradition all prove that a workingman, at the time *The Poulter's* case was decided, had not the right to quit his master at his pleasure, or that he could work or not as he pleased. The law at that time compelled him to work. Neither will such assertions, in their

broad sense, hold good in this country and at the present time. Every State in the Union, including the District of Columbia, have vagrancy laws which punish those, who, not having sufficient means for their support, refuse to labor. All must live in some way, and if persons cannot or will not support themselves, society from humanity and common decency must support them. Therefore, it would be impossible to imagine any form of government or society that would not possess compulsory power to enforce labor. It is easy to imagine counsel, in the heat of debate in a class of cases that create great public interest and frequently excitement, making use of general statements and propositions, right enough under the circumstances, but which would be grossly misleading and dangerous even if they were literally carried out. Neither is it astonishing that courts in rendering oral decisions and particularly in charging juries, in times of public excitement, and excitement reaches the bench, (the reported cases clearly show that), make statements that will not bear careful analysis. That such statements are made are shown by such remarks as these, "a man is free to work or not as he pleases," "a man may quit work when he pleases," "workmen may singly or in a combination quit the service of their employer," "workmen may demand as high wages as they please and if not paid quit their employer," &c., &c. A careful examination of the law shows that workmen may do nothing of the kind, especially in the broad sense which the language seems to convey. Such expressions are likely to create a false impression not only in the minds of workmen but also of lawyers. It will be found on careful examination of the cases where these expressions occur that such rights were not involved in the case. It will be found that work-



men were not peacefully and in a lawful manner exercising, what anyone would willingly admit to be not only a natural but a legal right to select their employers, but they were combined to, by force of numbers and with arms, inflict injuries on others. In no reported case will it be found that strikers had other than unlawful motives in combining and quitting the service of their employers. Their purposes have been not only to annoy but in most of the cases to destroy not only their employers but their co-laborers. In the early English cases which announce the law of conspiracy, there is clearly apparent an unlawful purpose, and the means were unlawful as well, and it is difficult to see how this part of the definition of conspiracy, "or to do a lawful act in an unlawful manner," could have arisen in those cases. That rule must have been recognized long anterior to the earliest case, but there does not appear to have been any reported case extant showing it. Let us commence with the first reported case, Anonymous, in 1354, and see whether the English judges were wrong in their definition of conspiracy. The conspiracy in that case was to maintain each other whether his cause was true or false. Although nothing was done to carry out the conspiracy, yet it was held to be unlawful. In the Poulters case, the conspiracy was to falsely charge a person with a robbery that never was committed, and cause him to be put to death. Notwithstanding the fact that it was so transparent that the conspirators perjured themselves on the inquest before the grand jury which was held in open court, that the judges ordered the bill to be ignored, and the party against whom the conspiracy was directed was not harmed, yet it was held to have been an indictable conspiracy. In the *King v. Sterling*, or the *Tubwomen v.*

the Brewers of London, the object of the conspiracy was first to impoverish the excisemen so they could not pay the King his revenue, and next to make them so unpopular with the common people as to cause them to commit riots and pull down the excise houses. Nothing was done towards carrying out the conspiracy in these cases, or, if there was, the efforts were abortive yet the conspiracies were held to be indictable. It is apparent that in each of the cases there was a wrongful and wicked intent. In only one of them, can it be said that the act to be done, if done by a single individual, was lawful, and that was the Sterling case. Certainly a single brewer could lawfully quit brewing a certain kind of beer and ale if he chose to, or he could quit the business altogether. But when all the brewers of London entered into a conspiracy to quit brewing a certain kind of beer it was altogether different. It is evident that men would not so combine without a purpose in view, and that purpose to operate injuriously upon certain individuals. These cases show, if they show anything, that it was the conspiracy that was punished; indeed there was nothing else to punish. These cases form the basis for the decision in the case of the Journeymen Tailors of Cambridge. It decided that a mere conspiracy was indictable, and the decision was based on the Sterling case. This case, therefore, is as well sustained by authority as any that was ever decided. It is not in reality as strong a case as the Tubwomen case, for at the time it was decided workmen had not the right to quit work singly if they had contracted to work for a specified time, and quit before the expiration of their term of service. It was a long time after that case was decided that the courts relaxed the common law rule so as to allow a workman to recover on the

quantum meruit. But as the case was decided on the rule laid down in the Tubwomen case, it was not inappropriate for the court to say "yet it is not for the refusing to work, but for conspiring that they are indicted, and a conspiracy of any kind is illegal although the matter about which they conspire might have been lawful for them, or any of them to do, if they had not conspired to do it." This certainly has been the view of all the great writers on criminal law, both English and American, without a single exception.

We, therefore, conclude this subject with the statement, that the rule as laid down in the Journeymen Tailors' case is the common law rule, and that it is the law of such States of our Union as have not abrogated it by statute. Further, in the American cases where it has been animadverted against, it was not in issue, but was dragged in as a side issue, to prejudice the jury against anything English. These cases, it must be borne in mind, were tried soon after the American revolution, or the war of 1812, when prejudice against all that was English ran high.

§ 5. Early English Statutes.

Taking into consideration the history of the working classes, it will not be astonishing that early statutes regulating labor were harsh towards the workingman. After Rome had lost her power to enslave the world, a form of slavery was introduced in the feudal system. This was purely military, devised to facilitate conquest in war. Without pretending to be critically precise on the subject, it will suffice to say its theory was that the King, or commander-in-chief of an army embarking in a career of conquest, was not only lord and master over his army, but of the soil of conquered countries. As an incentive to and reward for fidelity

and distinguished military services, the King or commander-in-chief parceled out all the land among his generals reserving to himself certain rights and privileges, and revenues to be derived therefrom, who in turn divided their seigniories among their immediate subordinates. This process of subinfeudation was continued until the lowest grade of officer was reached. Each subordinate paid to his immediate superior certain rents, called tithes, and rendered certain services. But chief above all was the oath of fealty that each took, by which they bound themselves to serve their superiors in war whenever called upon. They thus being bound to each other by a mutual interest, became invincible and overrun all Europe and firmly established the system. It was forced on the Britains, but resistance to it was long and stubborn. Assassination was resorted to by the feudalists to remove the most obstinate, and their estates subjected to feudal "absorption. This system entailed many inconveniences and hardships, among them the inalienability of realty, and inability of the subordinate to sever his relation to his lord or quit or abandon his manor without the lord's consent. Growing out of the feudal system as some authors think, or as others think existing before the feudal system, was villeinage, a condition of slavery. The villein was a character too insignificant and unimportant under a purely military system to be considered in any other light than as a "hewer of wood and drawer of water," fit only for kicks and cuffs and the lowest menial services.

These villeins, belonging principally to lords of manors, were either villeins regardant, that is, annexed to the manor or land; or else they were *in gross*, or at large, that is annexed to the person of the lord and

transferable by deed from one to another. They could not leave their lord without his permission, but if they ran away, or were purloined from him, might be claimed and recovered by action, like beasts or other chattels. They held indeed small portions of land by way of sustaining themselves and families; but it was at the mere will of the lord, who might dispossess them whenever he pleased; and it was upon villein services, that is, to carry out dung, to hedge and ditch the lord's demesnes, and any other of the meanest offices; and their services were not only base, but uncertain both as to their time and quantity. A villein, in short, was in much the same state with us as Lord Molesworth describes to be that of the boors in Denmark, and which Steinehook attributes also to the *traals* or slaves in Sweden; which confirms the probability of their being in some degree monuments of the Danish tyranny. A villein could acquire no property either in lands or goods; but if he purchased either, the lord might enter upon them, oust the villein, seize them to his own use, unless he contrived to dispose of them again before the lord had seized them; for the lord had then lost his opportunity."¹ The same conditions attended them as to marriage with a free man or free woman, and the same debased relations attended their children as always has that of other forms of slavery. Like any other slave, a villein could be manumitted.

This class, then, were the real laborers in the early history of England, and was only in keeping with the rest of the world.

This feudal system dominated the world for centuries. The guns of Napoleon exploding under the ancient thrones of the old world expelled it from con-

¹ 2 Blackstone, 93.

tinental Europe, while in England, the law ever battling for right and justice, has practically overthrown it there. Under English law right and justice, with no other champion than reason, and the love of the English people for fair play, will finally prevail. This is the great glory of the English law.

Keeping in mind this history, we need not be surprised, not only at the ancient but also the comparatively modern labor laws of England which kept the laboring man in a condition but little removed from that of slavery. But there will be noted in them a steady improvement. The English are never in a hurry. They are great sticklers for old established systems and customs. The common law is built upon that. But they do make improvements in their laws when thoroughly convinced that justice requires it.

Practically it might be said labor laws existed in England from time immemorial. As these ancient statutes are now no longer in force, there is no occasion to go to the trouble to fix the exact time of their introduction. They were very numerous. In Jacob's Digest many pages are occupied by mere reference to them. Only some of the most prominent features of them will be noticed, more for the purpose of reminding modern fault-finders that the present condition of the laboring man is not as bad as it has been or might be.

The statutes of 23 Edw., 3, and 25 Edw., 3, St. 1, passed in 1349 and 1350 respectively, provided "that every man and woman of what condition he be, free or bond, able in body, and within the age of three-score years (not having independent means of support) if he in convenient service (his estate considered) be required to serve, he shall be bounden to serve him which so shall him require." They were to serve

under pain of imprisonment, and receive no more than the customary wages. The act of 1350 fixed the wages of the most important mechanics. The object of the statute was to stop the demand for exorbitant wages, growing out of the dearth of labor caused by the great plagues. Again, "If any of said servants, laborers, or artificers, do flee from one county to another because of this ordinance, that the sheriffs of such county where such fugitive persons shall be found shall do them to be taken at the commandment of the justices of the counties from whence they shall flee, and bring them to the chief goal of the same county, there to abide till the next sessions of the same justices."

"And that none of them go out of the town where he dwelleth in the winter to serve the summer, if he may serve in the same town, taking as before is said."

The act of 3 Henry 6, c. 1, made it a felony to evade or neutralize the provision of the labor laws.

The statutes 2 and 3, Edw. 6, c. 15, forbade all conspiracies and agreements among artificers, workmen, or laborers not to work except at certain prices under the penalty of the pillory and the loss of an ear on a third conviction and to be considered "infamous."

The act of 5 Eliz. c. 4, compelled all persons able to work as laborers or artificers, and not having independent means, to work upon demand. It fixed the hours of work, and gave the justices power to fix the rate of wages. It prohibited any one from exercising any trade, craft or occupation then in use in England or Wales without first serving an apprenticeship of seven years. This statute was passed in 1562, and was not repealed until 1875.

The act of 7 Geo. 1, St. 1, c. 13, punished by imprisonment with or without hard labor, agreements

between journeymen tailors "for advancing their wages or for lessening their usual hours of work." The hours for labor were from 6 A. M. to 8 P. M. with an hour for dinner, and "one penny halfpenny a day for breakfast." It also fixed the rate of wages. Like statutes were extended to other trades and manufactures. By the act of 36 Geo. 3, c. III, twelve hours were fixed for a day's work with an hour for dinner, and provisions made for the suppression of combinations among workmen.

The act of 39 Geo. 3, c. 81, was passed in the year 1799, and provided for the suppression of all combinations by workmen for raising their wages. It was repealed in 1800 by 40 Geo. 3, c. 60. This last statute provided for reference to arbitration of disputes between masters and employes. It nullified all contracts between journeymen, manufacturers or other persons for an advance of wages, or for shortening hours of work, except the contracts of the master with any journeyman as to the wages of the journeyman. It also provided "for preventing or hindering any person from employing whomsoever he thinks proper, or for controlling or any way affecting any person carrying on any manufacture, trade or business, in the conduct or management thereof." Any journeymen violating this provision was liable to imprisonment without hard labor for any period not exceeding three months, or two months with hard labor. It also provided the same penalty for any person who "enters into any combination to obtain an advance of wages, or to lessen or alter the hours of work, or for any other purpose contrary to the act, or who, by giving money, or by persuasion, or solicitation, or intimidation, or any other means, willfully and maliciously endeavors to prevent any unemployed

person from taking service, or who, for the purpose of obtaining an advance of wages, or for any other purpose contrary to the provisions of the act, willfully and maliciously induces, or tries to induce, any workman to leave his work; or who hinders any employer from employing any person as he thinks proper, or who being hired, refuses without any just or reasonable cause to work with any other journey-men or workmen employed or hired to work." Also the same penalty for attending meetings, or collecting money for advancing such illegal purposes, or to assist or maintain men on strike.

The year 1824 may be fixed as the dividing line between the old and modern law on this subject. In that year the act of 5 Geo. 4, c. 95, was passed. The following year, 1825, 6 Geo. 4, c. 129, was passed, which, with some modifications, is now the law in England. Those statutes will be considered in the next chapter.

CHAPTER II.

STRIKES AS CONSPIRACIES—MODERN DOCTRINE.

- § 6. Acts of 5 Geo. 4, c. 95, 6 Geo. 4, c. 129.
- 7. Intimidation and coercion.
- 8. The right to strike.

§ 6. Acts 5 Geo. 4, c. 95, 6 Geo. 4, c. 129.

The act of 5 Geo. 4, c. 95, *inter alia* provided "That journeymen, workmen, or other persons, who shall enter into combination to obtain an advance, or to fix the rate of wages, or to lessen or alter the hours or duration of the time of working, or to decrease the quantity of work, or to induce another to depart from his service before the end of the time or term for which he is hired, or, not being hired, to refuse to enter into work or employment, or to regulate the mode of carrying on any manufacture, trade, or business; or the management thereof, shall not thereafter be subject or liable to any indictment or prosecution for conspiracy, or to any other criminal information or punishment whatever, under the common or the statute law." (§ 2.)

"(§ 5.) By violence to person or property, by threats or by intimidation, wilfully or maliciously to force another to depart from his hiring or work before the time for which he is hired, or to return his work before finished."

"Wilfully or maliciously to use or employ violence to the person or property, threats or intimidation

towards another on account of his not complying with trade Union rules.

“By violence to the person or property, by threats, or by intimidation, wilfully and maliciously to force any master or mistress manufacturer, his or their foreman or agent, to make any alteration in their mode of carrying on their business.

“Conspiring for any of the purposes before mentioned.”

This act was in force for but one year, when it was repealed by the act of 6 George 4, c. 129.

Section 3, of the last named act, under which many reported cases arose, is as follows:

“If any person by violence to person or property, or by threats or intimidation, or by molesting, or in any way obstructing another,—

“1. Shall force, or endeavor to force, any journey-men, manufacturer, workmen, or other person, hired, or employed in any manufacture, trade or business to depart from his hiring, employment or work, or to return his work before it is finished, or prevent or endeavor to prevent any journeymen, manufacturer, workmen, or other person not being hired or employed, from hiring himself to or from accepting work or employment from any person.

“2. Or shall use such means for the purpose of forcing or inducing such person to belong to any club or association, or to contribute to any fund, or to pay any fine or penalty on account of his belonging to any particular club or association, or of his not having contributed or having refused to contribute to any common fund or to pay any fine or penalty, or on account of his not having complied, or of his refusing to comply with any rules, orders, resolutions or regulations, made to obtain an advance or to reduce

the rate of wages, or to lessen the hours of working or to decrease or alter the quantity of work, or to regulate the mode of carrying on any manufacture, trade or business, or the management thereof.

"3. Or to force or endeavor to force any manufacturer or person carrying on any trade or business, to make any alteration in his mode of regulating, managing, conducting, or carrying on such manufacture, trade, or business, or to limit the number of his apprentices, or the number or description of his journeymen, workmen, or servants, such person shall be liable, with any person aiding, abetting, or assisting therein, to three months' imprisonment with or without hard labor."¹

Section 4 provides that the act shall not extend to subject any persons to punishment who meet together for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at such meetings shall demand for their work, or the hours for which they shall work; or who enter into agreement among themselves for the purpose of fixing the wages or prices which the parties entering into such agreement shall demand for their work, or the hours during which they will work.

Section 5, relates to meetings among masters.

The unlawful purposes mentioned in this statute, were to be accomplished by violence, threats or intimidation, molestation or obstruction.

¹ Arnold's Employers and Workmen, 41, 42. No guarantee can be given that this is a verbatim copy of the statute, but it appears to be the nearest to it of any that has been found. In several of the cases decided under it, what purports to be exact copies are given, and also in Stephen's "History of the Criminal Law of England," 3 Vol. 214, 215, but they all differ in phraseology in some places, yet they are all sufficiently accurate for our purpose in this country.

The cases arising under these statutes will be given in the following sections of this chapter.

§ 7. Intimidation and Coercion.

1. Definition. Black, in his law dictionary, defines coercion to be "compulsion; force; duress. It may be either *actual*, (direct or positive,) where physical force is put upon a man to compel him to do an act against his will, or *implied*, (legal or constructive,) where the relation of the parties is such that one is under subjection to the other, and is thereby constrained to do what his own free will would refuse." His dictionary does not have the word intimidation.

Bouvier defines coercion as "constraint; compulsion; force."

"2. It is positive or presumed. 1. Positive or direct coercion takes place when a man is by physical force compelled to do an act contrary to his will; for example when a man falls into the hands of the enemy of his country, and they compel him by a just fear of death, to fight against it.

"3.—2. It is presumed where a person is legally under subjection to another, and is induced, in consequence of such subjection, to do an act contrary to his will. A married woman, for example, is legally under the subjection of her husband, and if in his company she commit a crime or offense, not *malum in se* (except the offense of keeping a bawdy-house, in which case she is considered by the policy of the law as a principal), she is presumed to act under this coercion.

"4. As will is necessary to the commission of a crime, or the making of a contract, a person coerced into either has no will on the subject, and is not

responsible." Neither does Bouvier have the word intimidation.

Webster defines intimidation as the "act of making timid or fearful; the state of being abashed."

So far as this statute is concerned intimidation and coercion are synonymous. The party intimidated or coerced must be forced to do an act against his will, or there must be an attempt to force him to do so. Intimidation under the statute may be by threats.

2. *Reg. v. Hewitt and others*¹ was the first case. The defendants being members of a society known as "The Philanthropic Society of Coopers," entered into a conspiracy to compel the payment of a fine assessed against a member for violating a rule of the society. The offense consisted in working four days at a steam mill, where steam machinery was extensively used in making casks. The society objected to any member working where steam machinery was used. The fine was not paid, and in consequence the other men struck and refused to return while Evans, the recalcitrant member, was employed. As a consequence Evans was discharged. Lord Campbell, before whom the trial was had, said: "It appears to me that this is one of the most important cases ever tried before a British jury, and upon its result must depend very much the prosperity of the manufacturers and the good of the operatives. But let it be understood that, whatever may be the result of this case, such societies as the present are not in any way illegal. The Philanthropic Society is according to its rules, a most lawful and a most beneficial institution; the object of it is to take care of its members when sick, and to provide a decent funeral for them when they are called away; but

¹ *Reg. v. Hewitt et al.*, 5 Cox. C. C. 162.

it cannot be permitted that, under the guise of such laudable objects, the members shall enter into a combination or conspiracy to injure others. By law every man's labor is his property, and he may make what bargain he pleases for his employment; not only so—masters or men may associate together; but they must not, by their association, violate the law; they must not injure their neighbor; they must not do that which may prejudice another man. The men may take care not to enter into engagements of which they do not approve, but they must not prevent another from doing so. If this were permitted, not only would the manufacturers of the land be injured, but it would lead to the most melancholy consequences to the working classes. No doubt the defendants may have been under the delusion that they were doing what they were entitled to do, but they cannot be permitted to injure their neighbors in carrying out that which they may consider to be a protection to themselves. It has been stated by the witnesses, that a fine follows a man all over London and all over England. This shows the power of the society. Let them have their rules, and let them act under them; but if they are to fine for some *nondescript* offense, and that fine is to follow a man all over England—if the man is always to go about with that brand upon him, it becomes the more important that judges and juries shall see that such societies do not infringe the law. The payment to the men of 9 s. each for their loss of time was taken from the funds of the society, and a clear perversion of its objects. Verdict—guilty."

"This is a case in which it is right to pass judgment at once. The offense is a most serious one, and, if allowed to pass with impunity, would bring ruin upon

the trade and manufactures of this country, and would involve in its ruin the workmen, upon whom the prosperity of this country mainly depends. It clearly appears that this charitable institution departing from its laudable purpose, was applied to, to prevent one of its members from exercising his free will and enjoying his industry in a way which he thought most to his advantage. It is clear that the president, secretary and committees resolved that Evans should be punished for having gone to work at the steam mills;¹ they unlawfully imposed a fine on him for so doing, and they proceeded by unlawful means to induce him to pay that fine. This is an offense which the law must punish, and I hope it will be known to all these societies, that while they will be protected by the law when acting lawfully, the law will punish them when they interfere with the free will and the exercise of the industry of their members. It is an offense for which they must be severely punished."

In the opinion of Lord Campbell, the assessment and attempt to enforce payment of the fine mentioned was intimidation within the meaning of the statute.

3. Obstruction or Molestation, — forcing master to change his mode of carrying on business. *Reg. v. Duffield.*² In an indictment of twenty counts, which of course will not be given here, the defendants were indicted under the above act of 6 George 4, c. 129, § 3. This is a very lengthy case and only a brief synopsis of it can be given. Mr. Perry was a manufacturer of tin plates and japan work in Wolverhampton, England, and employed a large number of workmen. Some of

¹ Working people have always been opposed to the introduction of machinery, because they think it will dispense with a large number of employes.

² *Reg. v. Duffield et al*, 5 Cox C. C., 404.

the work was prepared for the workmen by machinery, which necessarily decreased somewhat their compensation. However, all of his employes were satisfied both with their pay and treatment. Mr. Perry and his men had been in the habit of regulating the question of wages between themselves without reference to what other manufacturers paid. The tin and japan works were so intimately connected that if one stopped the other must stop also. If the men in one branch of the business were thrown out of employment, those in the other would be obliged to stop work. There were four or five other similar establishments in the town, but they did not have machinery and as a consequence paid their employes slightly higher wages than did Mr. Perry. To April, 1850, not a word of complaint had been made by Perry's employes, and there was full employment for all of them. While in this condition of prosperity and contentment, Mr. Perry received a letter from London, the seal of which contained the inscription "National Association of United Trades, for the Employment of Labor," which read as follows:

"National Association of United Trades,
255, Tottenham Court Road, April 2, 1850.

"Sir: I am requested by the executive committee of the above association, to inform you that a deputation of their body, in conjunction with certain representatives of the tin plate workers of Wolverhampton, purpose waiting upon you on Monday, the 8th April, instant, to take your opinion on the book of prices which has been left for your examination, and which the tin-plate workers are desirous should be established as the recognized price-list for the town. I am further instructed to express, on the part of this committee, its sincere desire that by the proposed interview an arrangement may be come to, which may in

future contribute to the harmony and good feeling of both employers and workmen in your important and lucrative branch of manufacture. Mr. Frederick Green and Mr. Thomas Winter are the persons appointed by this committee to act in a mediatorial capacity on behalf of the tin-plate workers, and they venture to hope that you will receive them purely as mediators, and not as presuming to visit you in an offensive spirit of dictation.

I have the honor to remain, sir, your most obedient, humble servant,

WM. PEEL, *Secretary.*"

Mr. Perry having large orders to fill, and his experience teaching him that labor disputes between master and men never took place except when masters had large and pressing orders on hand, set about making himself secure by getting written contracts from his employes. In the contracts the wages were fixed, and the men bound themselves to work for certain periods; Perry binding himself to keep them supplied with work at the wages and for the time agreed upon under any and all circumstances. The men were to give six months notice of intention to quit, while Perry was to give only one month's notice of intention to discharge. Winter, Green and Peel waited upon Perry at his counting house and wished to know why he had dismissed a certain man. Perry declined to give any information, on that subject, whereupon they said they had come simply to settle the disputes between him and his men. Perry replied that he was unconscious of any disputes existing between them. A book of prices to be paid for labor was submitted to Perry for his approval, but desiring to avoid an open rupture he said he would take it under advisement. After several interviews, he said he would have nothing to do with it. From that time on he was subjected to annoyance and finally had to institute proceedings against the

defendants. Placards of an injurious character had been issued. Three of the defendants, Green, Rowlands and Peel attended a meeting of the tin-plate workers, and were made members of a secret local committee at Wolverhampton, at a salary of 4s. 6d. a day and 6d. drink money. From that time there was commotion among Perry's men. The three defendants lay in wait and met Perry's employes and enticed them away. His best men who had received liberal wages and had entered into written contracts disappeared from their work and from Wolverhampton. From eighty-five employes the numbers were reduced to twenty-two, the latter being the inferior workmen. The object in taking away the best men was to embarrass Perry as much as possible. These men were sent to different parts of the Kingdom and supported by small remittances. After a time they returned to Perry penniless, miserable and starving. Perry, being pressed with orders, went to France and Germany for workmen and hired them at any cost. Gaunt, Duffield and Woodworth, with the funds furnished them, got Perry's employes drunk and while in that condition sent them away. In order to secure workmen, Perry caused the following advertisement to be inserted in the papers :

“To Journeymen Tin-plate Workers.

Wanted, twenty good workmen in the above line ; constant employment will be given at the prices paid during the last eight years. Apply to Mr. Edward Perry, Jedds-work, Paul Street.

N. B.—Liberal advances will be made to steady workmen, Wolverhampton, July 24, 1850.”

Immediately after this advertisement appeared the following placard was posted about Wolverhampton and Birmingham :—

“Liberal advances to steady workmen.”

“Notice.—Mr. Edward Perry having refused to give the list price agreed upon by the trade society to be paid to the journeymen tin-plate workers in Wolverhampton, has advertised for twenty good workmen at constant employment, at the prices paid the last eight years. The journeymen are informed that the prices Mr. E. Perry pays are from 25 to 30 per cent under the prices paid at other manufacturers in this town, and from 10 to 15 per cent under the list agreed to by the men, which is the average between the prices paid by him and by Mr. Richard Perry, Mr. Walton and Messrs. Shoolbred & Co.

On behalf of the committee,

HENRY ROWLANDS, *Secretary*,

Wolverhampton, *July 24, 1850.*”

New employes were enticed away by the defendants and others who were posted at various places about the manufactory. New men applied for employment which was promised them, but they never returned, evidently having been persuaded not to. The effect of the employes quitting work and Perry being unable to get others was to prevent him from filling his orders. Not only were men persuaded to abandon their employment, but compelled to do so by threats of violence. One workman was told that he might get every bone in his skin broken if he did not leave town. Another was told, “you had better go or else it will be worse for you.”

It will be seen that the above facts cover about all the points made criminal in the statute of 6 Geo. 4, c. 129, § 3. In the charge to the jury, the court laid down the following propositions:

“1. It is a clearly established rule of law that workmen have a right while they are perfectly free from engagement, and have the option of entering into employment or not, to agree among themselves

that they will not go into any employment unless they can get a certain rate of wages, and each man for himself may say, 'I will not go into any employ unless I can get a certain rate of wages;' and all of them may say, 'we will agree with one another, that in our trade, as able-bodied workmen, we will not take employ unless the employers agree to give a certain rate of wages.'

"2. Workmen have no right to combine together to persuade men already hired by and in the employ of *other* masters to leave that employment, for the purpose of compelling those masters to raise their wages.

"3. A conspiracy to obstruct a manufacturer in carrying on his business, by inducing or persuading workmen who had been hired by him, to leave his service, in order to force him to raise his rate of wages, or to make an alteration in the mode of conducting and carrying on his trade, is an indictable offense; and an agreement to induce and persuade workmen under contracts of servitude for a time certain, to absent themselves from such service, is an indictable offense, although no threats or intimidation be proved, or any ulterior object averred.

"4. Workmen who agree that none of those who make the agreement will go into employ unless for a certain rate of wages, have no right to agree to molest, or intimidate, or annoy other workmen in the same line of business, who refuse to enter into the agreement, and who choose to work for employers at a lower rate of wages; and, such an agreement to molest or intimidate is an indictable conspiracy, as well in workmen willing to be hired and employed, as to those already hired and employed.

"5. The essence of the offense is the combination to carry out an unlawful purpose, and the unlawful

combination and conspiracy is inferred from the conduct of the parties. If several persons take several steps, all tending towards one obvious purpose, it is for the jury to say whether those persons had not combined together to bring about that end which their conduct so obviously appears adapted to effectuate.

“6. Conspiring to take away workmen is such obstruction and molestation as will support a count for molesting and obstructing.”

On the subject of molestation the court said, “if a manufacturer has a manufactory, and his capital embarked in it for the purpose of producing articles in that manufactory, if persons conspire together to take away all his workmen, that would necessarily be an obstruction to him, that would necessarily be a molesting of him in his manufactory.”

On the subject of conspiracy he said, “I do not enlarge with you at all on the rule of law in relation to the offense of conspiracy. It is most obvious in a word that if persons, intending to break the law are compelled to act single handed, those on the side of the honest part of the community can very well oppose them, and for the most part keep them under, but if those who are determined to break the law combine and co-operate together for that illegal purpose, they are a much more formidable enemy, and the law has said that combination for an illegal purpose is in itself an indictable offense.”

As to other workmen he said, “but with respect to their fellow-workmen they have no right at all to agree to molest, or intimidate, or annoy other workmen in the same line of business, who refuse to enter into the agreement, and who choose to go and work for the employers at a lower rate of wages than that which the parties agree to rely on.” * * * “It is

one thing to persuade and induce by giving money and giving drink and so on, which is the course that with respect to a great many of the workmen was pursued; that is one thing, and it is a very different thing from threatening a man either with personal injury, or with the loss of comfort in any way, if he chooses to sell and hire himself to another employer. That sort of offense, intended by this class of counts, is very much exemplified by Orchard's evidence. There is no doubt that, if you believe any part of his evidence with respect to the threats and believe that Duffield there was acting in concert with Woodworth and Gaunt, or any other person, it would be your duty to say one and all are guilty of this second class, namely, of conspiring together to endeavor by unlawfully molesting, or intimidating, or using threats to the workmen to induce them to leave their employ. That part of the law is intended for the protection of the workmen. *Let those without engagements agree to any terms they please, but they have no right to interfere with other workmen who do not come into the agreement, and who are, of course, at liberty to go to any employers on any terms they choose.*"

4. *Reg. v. Rowlands et al.*¹ This case grew out of the same transactions as that of *Reg. v. Duffield*, and the two cases are substantially the same. Mr. Stephens² states that *Reg. v. Rowlands* was the first case tried under the act of 6 Geo. 4, c. 129, § 3, but in this he was in error. According to the dates given in the reports *Reg. v. Duffield* was tried July 28, 1851, and *Reg. v. Rowlands* the next day July 29th. Both cases were tried before Judge Erle, and it is difficult to see

¹ *Reg. v. Rowlands et al*, 5 Cox. C. C. 436, 466.

Stephen's Hist. Crim. Law of England 217.

how such lengthy cases could have been tried in a day. Be that as it may, the counsel in *Reg. v. Rowlands* refer to *Reg. v. Duffield* as having been tried. *Reg. v. Rowlands* went up to the court in banc, and the rulings of the trial court were sustained. Therefore, the law as laid down in these cases may be considered authoritative expositions of the act of 6 Geo. 4, c. 129, § 3. The charge in *Reg. v. Rowlands* was substantially the same as in *Reg. v. Duffield*. In the former after making substantially the same remarks about the right of workmen to combine for their mutual benefit, the court said, "but the remark I would make on the other side is that the exercise of free will and thorough freedom of action, within the limits of the law, is also secured equally to the masters. The intention of the law is at present, to allow either of them to follow the dictates of their own will, with respect to their own actions and their own property, and either, I believe, has a right to study to promote his own advantage, or to combine with others to promote their mutual advantage." * * * "Taking it clearly to be a combination to force the assent to certain wages for the workmen. If it stood merely there, it might be doubtful, in point of law, how far such a combination was lawful; but if they combine to bring about that purpose by any unlawful means, unquestionably the indictment would be sustained. I think the three classes in respect of which the law is perfectly clear, are 1st.—If the purpose of the combination was to be effected by intimidation. There is a statute that secures those rights to the laborers, but prohibits any intimidation to the other laborers. Laborers are to have freedom of action, and those who choose to work for a lower rate of wages are to have their rights secured to them, and any combination of men to pre-

vent them from working for the wages that they should choose, by any intimidation or threat, is an illegal act." * * * "There is another class of counts very much to the same purpose. You will have to consider whether there is upon the evidence proof, to your satisfaction, that the defendants combined for the purpose of forcing this assent of Messrs. Perry, and intended to bring about that assent by intimidation to Mr. Perry. These counts allege that he was molested or obstructed. If they intended to create alarm in the minds of Messrs. Perry and so force their assent to any alteration in the mode of carrying on their business, they would clearly in my opinion have violated the law, and be guilty on those counts. There is, also, another set of counts, whereby the defendants are charged to have conspired together for the purpose of inducing workmen to leave the employment of Messrs. Perry, contrary to their contracts. The charge is of conspiring to induce workmen to leave the employ of Messrs. Perry, by reason of their being made drunk, and, by contrivances, being carried off into concealment; and I apprehend, if you are of opinion that those counts are sustained by the evidence, it will be your duty to find the defendants against whom that is made out, guilty. In respect of those three classes of the counts, I do not believe that there is any doubt in point of law that the crime of illegal conspiracy would have been committed by the acts alleged in them. But, supposing all or any of the defendants are acquitted of all those classes of counts, and you should still be of opinion that the combination was for the purpose of obstructing Messrs. Perry in carrying out their business, and so to force them to consent to this book of prices, and in pursuance of that concert, they persuaded the free

men and gave money to the free men to leave the employ of Messrs. Perry, the purpose being to obstruct him in his manufacture, and to injure him in his business, and so to force his consent. I am of opinion that that also would be a violation in point of law." On the subject of intimidation, he said, "I think, with respect to any intimidation to Mr. Perry, there does not seem to be anything like a direct threat of personal violence, or anything like a direct threat of actual violence to his property; but if a powerful body intimate that his lawful freedom of action will be interfered with unless he consents to certain terms, it will be for you to consider whether he might not be reasonably said to be intimidated if such matters occurred to him." * * * "If a man says that an event will happen, and it does afterwards happen, it is for the jury to consider whether the man who says it may happen, did not know the way to bring that event about, and whether, if it did afterwards happen, he had not a concern in bringing it about. With regard to the letter of the 2d of April, it used the word 'mediator,' and said the parties were to call in the perfect hope that they were to be taken 'purely as mediators, and not as presuming to visit you in an offensive spirit of dictation.' But then the effect, on a man's mind, of the expression, saying 'we do not come in an offensive spirit of dictation,' after notice of the power of the body, and what they could do, was certain to call up in the mind of a man, the feeling that these were persons who had the power, and might exercise it. When the book of prices was pressed on Mr. Perry, he said he would consider it, and did not give a direct answer as to its adoption; and if a man does not venture to speak his mind, what is the reason why he does not? It is because he

is apprehensive some evil consequence will arise and he is in fear from that evil consequence."

In the court in banc, Justice Pateson in pronouncing judgment said: "Now the law on the subject of masters and workmen has undergone a variety of changes in the course of the last fifty years, and at last, an act of Parliament was passed in the sixth year of the reign of his Majesty King George the Fourth, by which it was enacted, as has been stated by one or two of the learned counsel who have addressed the court on this occasion—by which the object of the Legislature manifestly was, that all masters and all workmen should be left entirely free to act as they themselves choose with respect to the conduct of their business. The masters should be at liberty to conduct their business in what manner they pleased, and to give what wages they thought right; that the masters should be at liberty to conduct their different establishments as they thought right; that a number of masters might agree among themselves in what manner they would conduct their business respectively, and what wages they would pay. In like manner, the Legislature intended to allow that the workmen should meet together, and agree and consider, and come to a positive agreement among themselves, on what wages they would work for, what terms they would require for their work; and they were not to be restricted from so doing merely because many of the workmen were in the employment of one person, and, perhaps, others in the employment of others. The Legislature having left both parties, therefore, intentionally quite free to make what agreement among themselves they thought fit, foreseeing, nevertheless, that it might be that much violence might be used, or much intima-

tion might be used, in order to carry into effect such agreement as the parties among themselves might make, enacted positively that no such violence, and no intimidation, and no molesting, and no obstructing should take place. And by that section of the act of Parliament to which the attention of the court has been directed, it is provided, that if any person shall, by violence to the person or property, or by threats or intimidation, or by molesting, or in any way obstructing another, force or endeavor to force, any journeyman, manufacturer, workman, or other person hired or employed in any manufacture, trade or business, to depart from his hiring, employment, or work, or to return his work before the same shall be finished; or to prevent, or endeavor to prevent, any journeyman, manufacturer, workman, or other person, not being hired or employed, from hiring himself, or from accepting work or employment from any person or persons, therefore, by either of these means, to persuade and endeavor to force any person to leave his employment, or to prevent any person from entering into employment which he would otherwise have been willing to enter into, or by violence or intimidation or molesting, to force, any manufacturer or person carrying on trade or business, to make any alteration in his mode of regulating, managing, conducting, or carrying on such manufacture, every person so offending or aiding or abetting or assisting therein, shall be imprisoned for any time not exceeding three calendar months. That is the offense created by the act of Parliament. Most of the charges in this indictment have reference to this act of Parliament, because they are charges that you have combined and conspired together to do these very things that are prohibited by act of Parliament,

that is to say, by threats, by intimidation, by molesting, by obstructing, to force workmen who were in the employment of Messrs. Perry, to leave their work; to force other persons who would have been willing to have been employed by the Messrs. Perry, not to enter into their employment, and to force the Messrs. Perry to change and alter, and make alterations in the mode of regulating and conducting and managing their business. Most of the counts of the indictment are framed on this act of Parliament. Now the offenses do not consist in combination and agreement amongst the men to raise their wages; it consists in using these means that are stated in the act of Parliament to be illegal, namely, violence, threats and intimidations, and molesting and obstructing, in order to produce those effects which are mentioned in the act of Parliament. In this case there is no charge in the indictment of any violence to the person or the property of any person. There is no such charge in the indictment, nor was there any evidence of it. The charges consist of threats, intimidation, obstructing and molesting, in a great variety of ways. Now some of you, Peel and Green, are not persons employed at Wolverhampton at all; the other four are you. William Peel and Frederick Green, appear to be members, one of you the secretary, and the other a delegate from the association which is said to have been formed in London, and to have existed for a great many years, the object of which, as far as we can gather it, appears to be to assist workmen in combining together, or in any steps they may take to protect what they may consider to be their rights, as against their masters. How far that is a legal association, or as to the merits of that association, I do not apprehend the court is here called

on to enter into, or to give any opinion upon it, with regard to its illegality, or with regard to the mode in which it is conducted. It is said there never has been any complaint made against them. It may be so. I cannot tell. But this is plain; it must be an association, which, if they have, as they say, very large funds at their command, must be one certainly, of a very dangerous character, and may be used for very bad and very oppressive purposes. I do not say that it has been, but certainly it is one that may be so used, and there is nothing to be said in favor of persons who belong to an association of that kind, and who, of their own accord, no doubt, go down to different parts of the country, to assist workmen who have, or think they have, any grievance whatever as against their masters and endeavor to regulate their wages. They are volunteers in that respect, and it is far better, it seems to me, for the workmen to be left to act as they themselves think proper, instead of having so powerful a body, as it seems this association must be with the money which they are said to have at their command. However, be that as it may, the offense consists, as I have already stated, in endeavoring to do these different acts by the unlawful means stated in this indictment. Now whether those means were used or not, whether there was originally a conspiracy to use those means or not, was a question which, by the law of this land, was entrusted entirely to the jury who tried the case. The jury, in this case, have come to a conclusion that all of you were guilty of a conspiracy to use those unlawful means in the various ways charged in the indictment, and it is impossible for the court not to see that, upon the evidence that has been detailed and read to the court on a former day,

the jury had materials from which they might come to that conclusion. It was in their province to determine if the charges were established or not against you; they have been fully satisfied that they were all established, and the court sees no reason to doubt the propriety of their verdict." * * * "But it does not appear, certainly, by the evidence that any words of express threats were used by any one of the persons I think that are implicated in this case, nor any words of express intimidation. But no man can fail to see that there may be threats, and there may be intimidation, and there may be molesting, and there may be obstructing, which the jury are quite satisfied have taken place from all the evidence in the case, without there being any express words used by which a man should show any violent threats towards another, or any express intimidation. There are these facts, however, disclosed in the early part of the evidence, that you Frederick Green, I think, being a delegate from London, on complaint being made in respect to some person who had been discharged from the employment of Mr. Perry, you wanting to know if it was because he was a member of some association, were told he was discharged because his employers had no occasion for his services, and you said 'If he was discharged because he was a member of an association, we have twenty thousand pounds at our command, we will stop the supplies, and you shall not have a single hand to do your work.' How far it can be doubted that that might intimidate even a man of strong nerve, who had a great deal of work which he wanted done, and who knew and was told of the great power this association had, it was for the jury to determine; and I cannot say

there may not have been great intimidation operating on the mind of Mr. Perry, from the language then used, although there was no express statement to that effect. And so again, with respect to that placard which was afterwards issued, signed by William Peel. Without going into all the language of that placard, no person can possibly read that without seeing that it contains very violent and inflammatory language; abusing very much the conduct of the masters, finding great fault with them, and as being persons who ought to be resisted and coerced in every way, and crying up the conduct of the workmen, and of the persons to whom it was addressed, as being temperate in every respect. I say that there cannot be any doubt that there was evidence from which the jury might fairly draw the conclusion that the intention was to molest, intimidate and obstruct. Therefore, there is nothing to prevent the court from passing what appears to be a proper sentence on such an indictment as this, either in respect of any doubt as to the propriety of the verdict, or as coming within the meaning of this act of Parliament. The charge is not directly under this act, because the act makes it an offense, and makes it an offense punishable by summary proceedings before a magistrate, and the charge in the indictment, as far as the offense is concerned, when proceeded for before a magistrate against persons who committed that offense, is confined to three calendar months imprisonment; but this is a charge of conspiracy to do those acts, and that is an offense which is a misdemeanor, and which is punishable by our law by fine and imprisonment at the discretion of the court. The court is not confined to the time mentioned in the act of Parliament, of three calendar months, but is

at liberty and is to look into all the circumstances of the case, and see what in their opinion and their judgment is the right punishment to be inflicted on parties who have so conspired. I mention that, lest it should be supposed, in the sentence I am about to pass, that the act of Parliament in any way restricted our power. Now, then, taking the whole of these circumstances into consideration, and being very willing to listen to the affidavits that have been made stating that there was no wrong intention on the part of those who have made those affidavits (although it is difficult to reconcile such an assertion with the evidence that has been produced), the court are not disposed to visit this case with more severity than it properly requires, in order that it may be a warning to others as we hope it will be received, and particularly to the members of this association, that they should take care that they do not overstep the limits of the law in any respect. I would moreover, say, that they should take care to keep very much within the limits, because if they do not they may depend upon it that those, with whom they are concerned, will over and over again overstep those limits, and cause them to be suspected, at least, of having authorized that overstepping and intended it from the beginning."

5. *Reg. v. Selby*.¹ This case was removed by certiorari and tried before Lord Cranworth, then Baron Rolfe, at the South Lancashire Spring Assises in 1847. The indictment was for conspiracy in eighteen counts. Without going into details, it is sufficient to state in brief that the defendants were charged with conspiring to raise their wages by impoverishing and reduc-

¹ *Reg. v. Selby*, 5 Cox C. C. 495 (note to *Reg. v. Rowlands*).

ing to beggary John Jones and Arthur Potts, by preventing them from using, exercising and carrying on their business as iron founders and engineers; next with conspiring to prevent said parties from taking into their service and employment certain journeymen and apprentices; and under the act of 6 Geo. 4, c. 129, with conspiring to obstruct and prevent their workmen and apprentices from continuing in their employment, and by divers indirect, unjust, oppressive and illegal means and practices to cause them to be removed or discharged, and after they were discharged from again re-entering the service of Jones and Potts.

All of the defendants, except Selby, had been in the employment of said Jones and Potts. In August 1846, a disagreement arose between the masters and employes about the employment of men and apprentices, the employes insisting on dictating to the masters who should be employed and the numbers. The masters refusing to comply with their demands, the defendants quit their employment and resorted to such measures as to compel the workmen who remained, to quit, and others who came for employment to leave the premises. Handbills were circulated and a system of picketing resorted to. As picketing will be the subject of a separate section no further mention will be made of it here. The defendants were members of a Trades Union and they wanted none but members of it employed. The case was tried by jury. Baron Rolfe in his charge said, "The law certainly now on this subject depends, I believe, entirely (that is the law about the rights of workmen) upon the statute (6 Geo. 4, c. 129) which has been referred to: before that statute it always having been considered, whether rightly or not I will not now say, that masters might

meet to say that they would not give more than a certain rate of wages. When I first had the honor of becoming a member of the profession, that was understood to be the law, that though the masters might meet to fix the rates of wages, the workmen might not. The masters might agree not to give more than a certain sum per day. There was a meeting of coachmakers in London, and at a variety of other places, at which that was done; but for the workmen to meet and say, we will not work unless they will give us 5 s. a day, or whatever sum they might demand, that was always held to be illegal, and it struck everybody's mind as being an unjust sort of distinction. If there is to be any distinction perhaps it ought to be rather the other way, and being felt to be an injustice, the law was altered about twenty years ago. It was then modified, and now depends upon an act 6 Geo. 4, which repeals all former enactments, and provides that all enactments then in force with respect to combinations of workmen shall be repealed, and that all combinations of workmen for fixing the amount of wages, or increasing or altering the hours of labor of the workmen, or to regulate the mode of carrying on any manufacture or intercourse, shall be regulated solely by this act, and then it proceeds to enact (in the policy and propriety of which I fully concur) that after the passing of that act, if any person shall by violence to person or property, or by threats or intimidation, or by molesting, or in any way obstructing, either force, or endeavor to force, any person employed, or employer, to do anything by intimidation, he shall be liable to punishment. Perhaps the enactment does not go on to punish him sufficiently; but that is the fault of the legislature, and such is the law. Nothing is to be taken to render any meeting illegal where the

object is not to work for less than a certain sum, so that the law now stands on an intelligent and rational footing. Those who are to employ labor may meet and say, 'we will not give more than such and such a rate, or we will stipulate for such and such a number of hours work; we will make, in short, regulations beneficial to ourselves as employers, and we agree that we will not take any workmen that require more.' On the other hand, the workmen may meet and say 'we will not work for less than such and such sums, and if anybody thinks to employ us on low wages we agree we will not work for them, and we agree to form a fund and support one another until we get them to come to proper terms.' That being the law, the market in that, as in all other things will find its own level, and what the value of that labor is will be found out by there being either a redundancy of hands out of work, or a redundancy of capital seeking for labor, and that is the policy of the law. But if any illegal means be taken, the principle of the common law steps in and says that if any persons conspire and combine together to effect this illegal object, an object that is of itself illegal, any such conspiracy to effect the illegal objects is itself criminal; and what the prosecutors of this indictment have done is this, they have not proceeded under the statute to indict the parties for the alleged illegal act, but they undertake to show that there was a general combination amongst them all to effect these illegal acts, and for that it is they have indicted them. That is a legal course to pursue, and being legal I shall not step out of the path of my duty by speculating upon the policy that has been adopted in this case. It would be, however, much more satisfactory to my mind if parties were indicted for that which they have directly done, and not for

having previously conspired to do something, the having done which is the proof of the conspiracy. It never is satisfactory, although undoubtedly it is legal." * * * "The evidence is in the first place, that the Messrs. Jones and Potts, employing large quantities of workmen, those workmen did, in point of fact, begin to leave in great numbers about the month of August last, and concurrently with their so doing, or nearly so, namely in October and November, many of these rejected workmen and workmen who had left them, used to be seen walking about in the neighborhood of the works, and the suggestion is that they walked about in the neighborhood of the works for the purpose of illegally (violently) obstructing and by threats or violence preventing persons who otherwise would be willing to work for Messrs. Jones and Potts, from working for them. There is evidence that twenty-three of these defendants, that is all except Selsby, Bowman and Reed, had withdrawn themselves from the employ of Messrs. Jones and Potts, and there is evidence that they were seen in the month of November walking about near the foundry." * * * "The first thing you are called upon to infer is, because they were walking about there, that they were walking about for the purpose of preventing persons coming to the foundry, and the question is how far that is a reasonable conclusion in a criminal case. If you see persons doing nothing, it is unfair to say they were walking for an illegal purpose. A certain meeting took place early in September, at which undoubtedly, it was stated that the picket should consist of the number of four. Now, I must confess, supposing it was the case that a picket was formed, it does not seem a necessary consequence that although some of the parties were found in the same

boat, in one sense that they were parties to the picket. They would be out of employ, and it was very natural that they should lounge about, and the question is whether they did more than they are proved to have done, namely that they were walking about. This observation, of course, applies with more force to those who have been only seen there once, and with less force to those who have been seen there often. It seems rather a harsh thing in a criminal proceeding to say that they were doing anything else, or that they were there in pursuance of any other objects than the acts which they performed when there. But with respect to a number of other defendants, to whose names I will now call your attention, certain distinct acts done by them have been deposed to."

* * * 'You had better not go there, for you will not stop long.' 'If you do, you shall be called a knobstick' (meaning a man that takes another man's place for lower wages); 'If you go to work there you will repent it before the winter is over.'

"A great deal may be said as to the precise words used; what I think you must consider is not so much the very words, as whether the fair result of it was to intimate to the person to whom it was addressed, that some bodily harm would happen to him if he persevered in his intention of working at Messrs. Jones and Potts, when they only said, 'it will be the worse for you, and you will regret it;' and so on. There are no particular words necessary to be used if the fair inference is that which has been taken, that it was to prevent the other party from persevering in the intention of working for Jones and Potts, and unquestionably that would bring home the charge of intimidation, and these parties would be guilty of conspiracy." * * * "It is doubtless lawful for

people to agree among themselves not to work except upon certain terms; that being so, I am not aware of any illegality in their peaceably trying to persuade others to adopt the same view. If it is lawful for half-a-dozen people to agree together and say; 'why, we will not work unless Messrs. Jones and Potts raise our wages,' so it is perfectly reasonable to say to a third man, 'you had better do that too,' *if they do not use threats to deter him from doing it; but it is not necessary to use actual threats, if the language used is such as tends to convey the impression of intimidation.*"

The court also instructed the jury that molestation would be sufficient to sustain the indictment.

6. **Rex v. Bykerdike,**¹ The defendants were indicted for conspiring to dictate to masters what workmen they should employ, and for preventing fellow-workmen from continuing in employment. The court instructed the jury that a conspiracy to procure the discharge of any of the workmen would support the indictment, which did not necessarily lay the intent as to all the workmen; and if it did, that it was still a question whether the facts would not have proved it as to all. Further, that the statute never meant to empower workmen to meet and combine for the purpose of dictating to the master whom he should employ; and that this compulsion was clearly illegal.

7. **In re William Perham.**² **Threats.** The said Perham was convicted on an indictment under the above statute for endeavoring by threats to force a workman to depart from his employment. The application was for a writ of *habeas corpus* on the ground

¹ *Rex v. Bykerdike*, 1 Moody and Robinson, 179.

² *In re William Perham*, 5 Hurl. and Nor. (Ex.) 30.

of the insufficiency of the indictment. The threats were, "if you dare work we shall consider you as blacks, and when we go in we shall strike against you, and strike against you all over London," and following workmen to their homes. It was held that the conviction on the indictment was proper, and the writ was refused.

8. Wood v. Bowron.¹ Threats. Case stated by justices of Durham, under 20 and 21 Vict. c. 43. "At a petty sessions holden at Stockton, on the 20th December, 1865, an information was preferred by Thomas Bowron, builder (the respondent), against William Wood and Thomas Barron, bricklayers (the appellants) under § 3 of 6 Geo. 4, c. 129, charging that they, Wood and Barron, did on the 28th October last past, at, &c., unlawfully, by using certain threats, force or endeavor to force, the respondent to limit the number of his apprentices; and the appellants were convicted of the said offense, and sentenced each to one calendar month's imprisonment, with hard labor."

Upon the hearing of the information, it was proved, on the part of the respondent, and found as facts, that the respondent was a master builder in Stockton, and the appellants were bricklayers, and members of a certain society or association called the United Order of Bricklayers, Wood being the president and Barrow the secretary. On a Monday morning in the early part of October last, the respondent was engaged at a certain building in Stockton, and when there he saw the appellant Barrow and another man named O'Hare standing within about thirty yards of the building; the respondent sent two of his men for a ladder, when they were stopped by Barrow and O'Hare,

¹ Wood v. Bowron, 2 L. R. Q. B. 21.

who both spoke to them; the men then went back to the building and began to pick up their tools and stated they had been stopped by Barrow and O'Hare. The respondent then asked Barrow and O'Hare the reason why the men had been stopped, and they told him that he must know it was on account of his apprentices. In October last the respondent had four apprentices. All his men stopped at that time, with the exception of two bricklayers. There was no agreement between the respondent and his workmen with regard to the time that the engagement between them should continue; the men were at liberty to leave, and the respondent to discharge, at any time. About two or three weeks after the stoppage, the respondent wrote to the appellant Barrow the following letter:

"NORTON ROADS, *October 28, 1865.*

TO THE SECRETARY OF THE BRICKLAYERS' UNION:

Sir,—Will you please to inform me what was the reason that my men were taken away from me? I have heard that it was because I employed too many apprentices; of this I had no notice. I should like you to let me know what you require me to do.

Yours respectfully,

THOS. BOWRON."

In reply the respondent received the following letter, in the handwriting of Barrow.

"BLACK HORSE, *Oct. 28.*

Sir—At a summoned meeting held at the above place of the United Order of Bricklayers, it was proposed, seconded, and carried unanimously, that no Society Bricklayer will work for Thomas Bowron until such times as he parts with some of his apprentices; namely, he will be allowed two, and when his oldest apprentice arrives to his last year of servitude, he will be allowed a third, and until then there will be no society Bricklayer work for him; and, further,

there will be so much expenses to pay as well before any Society Bricklayer will work for the said Thomas Bowron. By order of the Society."

It was proved to the satisfaction of the justices, and they found as a fact, that this letter was written at a meeting of the United Order of Bricklayers, at which meeting Wood acted as chairman and Barrow as secretary.

Shortly after the receipt of the above letter, the respondent had a demand made upon him for 18 l. by Wood, who stated that the money must be paid before they would allow any men to work for the respondent. In reply to the letter received by the respondent from Barrow, the respondent again wrote to Barrow, requesting to know upon what terms he would be allowed to have men; and in answer he received a letter to the effect that it would be decided at a general meeting to be held on the Thursday following. On the 28th November, the respondent sent his foreman, George Lazenby, to the Bricklayers' Union, at their request. He saw Wood there, who told him that he supposed he (Lazenby) had come to know the result in Mr. Bowron's case, and Lazenby replied that he had. Wood then said the decision they had come to was, that Mr. Bowron must pay 18 l. expenses incurred by the society, otherwise the men would not be allowed to go to work.

The justices being of the opinion that the evidence brought the case within the operation of § 3 of 6 Geo. 4, c. 129, gave their determination against the appellants in the manner before stated.

If the court should be of opinion that the conviction was legally and properly made, and the appellants are liable as aforesaid, the conviction was to stand; but if

the court should be of opinion otherwise, the complaint was to be dismissed.

In deciding the case, Chief Justice Cockburn said; "I am of opinion that this conviction must be quashed. It is quite unnecessary to determine, in the present case, whether the combination of the workmen forming this association, and the resolution which they adopted that no member of the society would work for the respondent until he reduced the number of his apprentices, would be, at common law, lawful or not. I quite agree with Mr. Coleridge that the cases ought not to be pressed further than they have gone; and we ought, as long as nothing is done contrary to law, to leave it open to labor on the one hand and capital on the other to make the best terms they can for themselves. Large numbers of men, who have not the advantage of wealth, very often can protect their own interests only by means of association and co-operation, and we ought not to strain the law against men who have only their own labor and their association by which they can act in the assistance of one another. Nevertheless, there may be combinations which are contrary to the law—contrary to the statute law or the common law, as the case may be. It is unnecessary, however, to determine the important question of law, whether such a combination as the present was lawful or not. The conviction is under this particular statute; and in order to sustain the conviction, it is necessary that there should be a threat or intimidation with the object of compelling the master to alter the conduct of his business, or to limit the number of apprentices he may employ. It is most important, therefore, to look at the facts, in order to ascertain whether there was a threat or intimidation such as is the subject matter of the conviction. It

seems that certain members of the association, of which the appellants are respectively chairman and secretary, were in the employment of Mr. Bowron, the respondent. On a certain day, without notice to him, certain of his workmen, having been seen in conversation with the appellant Barrow, suddenly leave his service, no threat at the time being made to the master. The men having left, he inquires of Barrow why the men left. Barrow simply says: 'You must know that it was in consequence of your apprentices.' In that I can find no threat on the part of Barrow, still less a threat by Wood. The master is the next person who moves in the matter. There is no communication made to him spontaneously by the association; the resolution bears no semblance of an intention to intimidate him by means of a threat; but the master himself, not only for the purpose of ascertaining what was the cause for which the men had withdrawn from his employment, but evidently for the purpose of entering if possible, into an arrangement with the society, puts himself in motion, and writes to ask what are the reasons and the grounds for which these men are withdrawn. Upon that a letter is written by Barrow at a meeting, at which it appears the appellant Wood presided, for which letter, therefore, I think, if it amounted to a threat, Wood would have been responsible. The letter, however, which Barrow writes, upon the face of it, appears to be merely an explanation of how it came to pass that these men had left the respondent's employment. Now, inasmuch as it is not for the combination, as it is not for the resolution, as it is not for what may have been done under the resolution, either by the society or by the men leaving, that this information was laid or this conviction has been obtained, but for a threat,

we must see whether the letter written under the circumstances I have adverted to amounts to a threat. I think it does not. If there had been anything to show that the letter purporting to afford an explanation by way of answer to a question put by the employer had been intended really to convey a threat, and the magistrates had come to that conclusion, and said, 'We think that the defendants have, under the guise of an explanation, conveyed that which was intended to be a threat,' that would have been another matter. I must say I do not think there is enough to warrant this inference under the circumstances, seeing that the master himself invited the explanation. The appellants merely told him what had been the cause of the withdrawal of the men, and I think that does not amount to a threat within the terms of the act of Parliament. Upon that ground I think that the conviction cannot be sustained. Mr. Manisty has pointed out, with truth, that this was a matter on which it was for the magistrates to adjudicate. If they had drawn the inference that what had been done had been done under the guise of an explanation, but really with the intention of conveying a threat that might have made all the difference. But the magistrates have not drawn that conclusion; they have submitted the whole case to us upon the evidence; and unless we can say that the magistrates were bound to draw the inference, we must not assume that they have done so, when we think that they ought not. Therefore it is competent to us to look at all the circumstances of the case, to satisfy ourselves whether there can be a conviction against these men of having sent this letter with the intention and purpose of conveying a threat. Under all the circumstances of this case, I think this was neither more nor less than an answer and expla-

nation to the master, who was evidently desiring to enter into a negotiation; and I do not think there is enough to justify an inference that this letter was written *mala fide*. Therefore I think the conviction should be quashed."

Mellor, J., said, "I am of the same opinion. It is quite unnecessary in this case, as it seems to me, to express any opinion as to how far the act of the men in meeting and coming to that resolution was or was not lawful at common law. The authorities seem to differ as to how far a combination may make an act unlawful. Lord Campbell in *Hilton v. Eckerly*, expressed a strong opinion in favor of the right of labor to combine as to wages; and the late Mr. Justice Crompton, in that case and in the case of *Walsby v. Anley*, seems to differ in opinion with Lord Campbell. It is not necessary to determine in this case how far the legality of the act is affected by the actual combination. I am clear that to sustain the conviction the justices should have found as a fact that the defendants, under color of giving the answer which they did to the application of the master, took advantage of the opportunity to urge that which amounted to a threat, and which they intended to operate as a threat. Now, if the justices had found that as a fact, of course I should have had very great difficulty in coming to any other conclusion than that the conviction was legal. But the justices have abstained from that finding; they have merely stated the evidence generally, without drawing any inference; and the evidence shows, as far as I can judge, that this was an answer *bona fide* made to an application for information on the part of the master as to what was the reason why the men left. If so, it evidently was no threat. It appears to me that, upon the facts

so stated, we cannot draw the inference that it was *mala fide*; we must look at the mere circumstances as the justices have stated them. It is not sufficient that the justices were in a condition to draw a conclusion one way or the other; they have not done so, and certainly we are not to do it."

Shee, J., said, "I am of the same opinion. I think that the facts of this case have been very conveniently submitted to us as in the three stages by Mr. Coleridge. As to the last of those stages, that has, I think, been satisfactorily disposed of. The fact of Wood asking for 18 l. for the costs and expenses the society had been to had nothing to do with the threat of which the appellants were convicted by the magistrates, viz. of 'having unlawfully, by using certain threats, forced, or endeavored to force, their employer to limit the number of his apprentices.' They were convicted of this threat; and taking the first stage proposed by Mr. Coleridge, was the passing of that resolution a threat? Is it an intimidation given to any person with the intention at the time it is made of forcing or unduly influencing his conduct? It does not appear upon this case that at the time that resolution was passed either of the appellants was present at the meeting. But independently of that, supposing that they had been present at the meeting, the resolution itself, though the name of Mr. Bowron is mentioned in it, does not appear to have been intended to be communicated to him; it is in its terms nothing but a resolution in the shape of a rule of conduct agreed on by the members of the United Order of Bricklayers. If it had been communicated to the respondent, his name being mentioned in it, at the time it was made, then, indeed, there might be ground for contending—and I should not be indisposed to think, upon the

authority of *Walsby v. Anley* (30 L. J. M. C.) 1211—that the communication of it was a threat. There being, however, nothing of any kind to show it was intended to communicate the resolution to the respondent, it seems to me the fact that it was not communicated to him at the time takes it clearly out of the denomination of a threat; for there cannot be a threat to any one unless it be intimated to him. A threat must be an intimation made with the intention of forcing or unduly influencing the conduct of persons to whom it is addressed. Then, on the second stage of the case, to which Mr. Coleridge invites our attention, was the communication of this resolution on the 28th of October a threat? I think not. A threat must be an intimation given by a person of his own accord, and within this statute it must be made with an intent to coerce or endeavor to force the future conduct of the person to whom it is addressed. In considering whether this communication of the resolution was a threat, we must look at the words and essence of the resolution itself. It purports to be nothing but a rule of conduct of the members of the order of United Bricklayers; moreover, it was communicated long after it was made—possibly more than a month after it was made—and then in answer to an inquiry. It seems to me that it was only information given at the master's request. The resolution does not appear to have been intended to be communicated to him at the time it was made. It was sent as information in answer to his inquiry, 'why did these men leave my employment?' 'They left it because the resolution was passed by the society of which they are members, and that is now communicated to you.' There is nothing in this case to show that what was done was done in the way charged, as a

threat, in order to force the respondent to change his mode of conducting his business for the future. It appears to me, therefore, that the conviction should be quashed."

Lush J. said: "I am also of the same opinion, that there is no evidence to sustain the conviction. After the decisions that have been given upon this statute, it is too late to say that the word 'threat' is limited to the declaration of an intention to do those acts with which it stands in intimate connection, viz. acts of violence to the property or person of another. The cases that have been decided show that the word must have a wider sense; namely, a threat by act or words of doing some injury to another person. But I apprehend that it is the very essence of a threat that it should be made for the purpose of intimidating or overcoming the will of the person to whom it is addressed. Now, here a resolution was come to not to work for the particular master until he reduced the number of his apprentices. Whatever its quality might be at common law, certainly it is *per se* no offense against the statute. Nevertheless, it might have been so used as to constitute a threat. The question in my mind is, whether it was used for such a purpose as to be construed a threat within the meaning of the statute. When I find the resolution previously passed was not communicated to the master except in answer to his inquiry, by way of explanation why these persons had left his employment, and then communicated simply for the purpose of giving that information, it seems to me that there are wanting the essential elements of a threat. Therefore, I am of the opinion that the appellants were not rightly convicted."

9. *O'Neill v. Longman*.¹ Threats.—Case stated by stipendary Police Magistrate for the borough of Kingston-upon-Hull, under Statutes 20 and 21 Vict. c. 43.

“Upon an information preferred by the respondent against the appellants under Stat. 6 G. 4, c. 129, § 3, charging that the appellants did, ‘unlawfully by threats and intimidation endeavor to force’ the respondent ‘who was then and there a workman hired in the trade and business of a boiler-maker by Henry Raines Kruger and his partners, then and there to depart from his said hiring contrary to the said statute,’ each of the appellants was convicted of the said offense, and adjudged to be imprisoned and kept to hard labor for three calendar months.

“Messrs. Kruger, Dannatt & Co. who are boiler makers at Hull, some time ago contracted with the Manchester and Lincolnshire Railway Company to make two boilers. Having on a former occasion employed a man named Garvan to execute a similar contract, Messrs. Kruger applied to him again. The negotiation, however, failed, and they declined to accede to Garvan’s terms as to the time and mode of payment. Garvan is a member of the United Boiler Makers and Iron Shipbuilders’ Society, a benefit society or club not registered, but having branches in every place of importance in England, Scotland, Ireland and Wales, the executive committee of the society being stationed at Manchester. The executive committee at Manchester deriving information from the local boards, issue a report in a printed circular periodically on matters connected with the society, and if a member is expelled his name is inserted in such report.

¹ *O'Neill v. Longman*, 4 Best and Smith, 376.

"The appellants, O'Neill and Galbraith are members of the society, O'Neill being president of the Hull branch, one Roberts being the local secretary.

"The negotiation with Garvan having gone off, Messrs. Kruger's foreman of boiler-makers, Longman, the respondent, communicated on the 6th March, 1863, with the secretary of the Hull branch of the boiler-makers society, with a view of obtaining men to perform the work. The boiler-makers belonging to the society had divided themselves into three classes of workmen, "holders up," "rivetters," and "platers," the latter being the highest class, and comprising those who are supposed to be skilled in bending angle iron for the boilers; though in many very large establishments angle iron bending is performed by the blacksmiths, and not by those calling themselves exclusively boiler-makers, the boiler-makers having in reality sprung from the blacksmiths, and following one branch only of the blacksmiths' business.

"Longman is a member of the society, or what is called a club-man, and there were at that time three other members of the society, Jordon, Bell and Longthorne, in the employ of Messrs. Kruger.

"On the 12th March all attempts to obtain men from the club having been unsuccessful, Messrs. Kruger ordered their foreman blacksmith, Norfolk, who is not a clubman, to commence work on the boilers by bending angle iron, Norfolk having on former occasions performed similar work, and being fully competent as an angle iron-smith, though not ordinarily employed in such a way. Norfolk continued his work of bending angle iron from the 12th without intermission. On the afternoon of the 12th Longman was summoned to attend a meeting of the society, the object of the meeting, as stated in the summons, being 'to stop an

encroachment.' Longman attended the meeting and found the encroachment to be 'Norfolk working at angle iron.' O'Neill was in the chair, and a resolution was passed that the men belonging to the society should not be allowed to work at Messrs. Kruger's if Norfolk was allowed to work at angle-iron work. A resolution was then proposed by Longman and carried, that two deputies should be sent to Mr. West, Messrs. Kruger's foreman, to speak to him in reference to knocking off Norfolk from bending angle iron. One deputy was to be rivetter, Fairfield, the other an angle-iron worker, Beaumont. O'Neill then told Longman, Jordan and Bell, who were present, that, being clubmen working in Kruger's yard, they would have to come out if Norfolk was not knocked off angle-iron work. Beaumont and Fairfield went from the club to the house of Messrs. Kruger's foreman, and Beaumont offered his services as an angle iron-smith, stating he was a clubman, and had come from the club and was going to return there again. He was told that Norfolk had been set to work, but was promised a job if he came the next day.

"On the 13th of March, Beaumont went to Messrs. Kruger's, and had some conversation with Longman and the other clubmen in their employ. He was told by West to begin angle-iron turning, and replied that he understood the club to say that he was not to work unless Norfolk gave over working at the angle-iron work. He went away without working. After dinner on the 13th, Jordan, Bell and Longthorne did not return to work, but Longman continued to work as usual.

"On the 14th March, Beaumont came to work for a few hours and bent one bar of angle iron, but the work was so badly done that it could not be used, and

Jordon, Bell and Longthorne also came to work as usual. On the evening of the 14th there was another club meeting, and after the 14th neither Beaumont, Jordon, Bell or Longthorne ever came to work again; Longman, however, continued to work as usual.

“The 16th March was the anniversary of the society; and there was a dinner at 7 P. M. Longman and Longthorne went in the evening and called O'Neill out from the dinner, and Longman asked him as president of the Hull branch of the society, why they should leave Kruger's works. O'Neill replied: 'I, John O'Neill, as president of the society, order you (meaning Longman and Longthorne) to come out;' and he called Longman 'a damned thief,' and other abusive names, and said 'if he (O'Neill) had been one of the men working at Kruger's premises, previous to this occurrence, he (O'Neill) should certainly have pulled Longman out.' O'Neill also said that 'he would use his influence to have Longman turned out of the society. Longman, however, did not leave his work at Messrs. Kruger's. [On the 17th March, Galbraith and others came to Messrs. Kruger's works as a deputation from the club, with respect to the difficulty that had arisen in relation to the club-men working if Norfolk were allowed to continue his work at angle-iron bending. Kruger told the men at this interview that forbearance would not last forever, and Norfolk was continued at his work.] After this Longman received a summons to attend a meeting of the club on the 28th 'on important business.' Longman attended the meeting at which there were fifty members present, and among the rest Galbraith, O'Neill being in the chair. The business was whether Longman was going to stop in the society and leave Kruger's employ, or remain at Kruger's and be turned out of the society. Galbraith

made a report of the proceedings of the deputation to Messrs. Kruger on the 17th, which was put to the meeting, received and adopted. Longman was afterwards asked by O'Neill, from the chair, whether he intended to remain an honorable member and leave the shop (meaning Kruger's employ), or stay in the shop and be despised by the club, and have his name sent round all over the country in the report, and be put to all sorts of unpleasantness. Longman told O'Neill that if there was anything to undergo he would bear the consequences; but, several of the members having come round Longman, a resolution was passed giving him till Monday the 30th for his consideration, and Longman said he would duly consider it. The result of which was, that he wrote to the secretary a letter declining to leave his employment. It was stated at this meeting that they could not legally turn Longman out of the society then, but would have to write to Manchester; and a resolution was passed that Norfolk's case and the master's case should be determined according to rule, and Longman's case also, the rule being that club-men should not use their influence to obtain work for non-society men. Longman asked O'Neill what the rule was, and O'Neill replied they should refer to Manchester. Longman, at the time the case was heard, could not say whether he had been turned out of the club or not, but he had received no notice to that effect.

"The magistrate found each of the appellants guilty, being of opinion that the rules of the club (a copy of which was appended to the case) did not sanction what had been done by appellants, or offer any explanation of their conduct consistent with innocence; and what took place on the 28th March, looking also at the

spirit previously evinced, constituted the offense contemplated by Stat. 6 G. 4, c. 129, § 3: being also of opinion that there was a combination, not for the purpose *bona fide* of carrying out the rules of the club, but with the object of coercing Longman to depart from his hiring against the wish and also to the injury both of himself and Messrs. Kruger, and with the intention thereby of coercing Messrs. Kruger to comply with the wishes of the club as to Norfolk.

“The question for the opinion of the court was, whether the magistrate was entitled to find that such an endeavor on the part of each of the appellants to force Longman to depart from his hiring by threats and intimidation, as constituted the offense contemplated by Stat. 6 G. 4, c. 129, § 3, had been made out.”

Wightman J. *inter alia* said: “The question is whether these expressions of O'Neill are such a threat as bring the case within the act of Parliament. Longman was a member of the society from which he was threatened to be turned out; it was a society beneficial to the members; no rule was infringed by his remaining in the employment of his masters, therefore, the effect of the threat was this: ‘If you do not leave the employment of Messrs. Kruger, in which you are now, you shall cease to be a member and to have the benefit of this club.’ Considering the place in which the words were spoken, I cannot put any other construction upon them. And the sending round his name all over the country was to be in a report issued by the executive committee at Manchester to the branches all over the country, including the place where Messrs. Kruger carried on business. It seems to me that this is a threat which would operate most formidably on the mind of a member of the society; and I hardly know what sort of threat short of per-

sonal violence would come within Stat. 6 G. 4, c. 129, § 3, if this is not such."

He was of opinion that the evidence was not sufficient as to Galbraith.

Blackburn J. was of the same opinion as Wightman, except he thought the evidence sufficient as to Galbraith. He said *inter alia*: "It is said that these persons thought they were acting legally; if so, it is time they should be informed of their mistake. Every man has liberty to work for any master, but not to coerce others, or to combine to deprive others of that liberty. O'Neill was guilty of the offense of which he was convicted, and, though charged with acting jointly with another, namely Galbraith, may be convicted separately; and therefore, as against him, the conviction is affirmed."

10. O'Neill v. Kruger.¹ Threats to Coerce Employer.
"The case was the same as in the preceding, substituting the two following for the paragraphs between brackets in page 380.

On Tuesday, the 17th March, 1863, Galbraith, with two other club-men, saw Mr. West at the works, and said the object of their visit was a deputation from the society to come to some terms as to the dispute which had arisen between the club-men in Kruger's employ and Messrs. Kruger as to Norfolk doing the angle-iron work at the boilers. West showed the deputation Beaumont's work. Galbraith said, if he had been master where such work was done he would have discharged any man who did it. West said to Galbraith that they would have no comfort if Norfolk did not finish the angle-iron he had begun and in the meantime let the club send a competent man to do the

¹ O'Neill v. Kruger, 4 Best & Smith, 385.

angle-iron work for the other boiler. Galbraith said he would take upon himself to call a meeting of the society to seek for a competent man for Messrs. Kruger. Mr. Kruger was present. Galbraith said that none of the club-men would work for Messrs. Kruger so long as Norfolk, the smith, was at work at iron angle work. Kruger said, how would they like to be so treated, as when they had applied for men and an incompetent man had been sent, that they should be refused the services of their own man; that it was a proper blacksmith's job: that Norfolk had done it before, that he could do it well; that the bar was spoilt that Beaumont had bent, and they wished to prevent them from having the services of a competent man, and asked who was to pay for Beaumont's bad work. Galbraith said one of the objects of the society was to obtain work for their men: that they had good men among them, and could provide Kruger an angle-iron smith competent for the work, but that when their man came Norfolk must cease the iron bending. They expressed their willingness to find Messrs. Kruger a competent man, but that they would have to wait two or three days for him, as business was very brisk, but that they would not allow any of their men to work in Kruger's yard so long as Norfolk was allowed to bend angle-iron work. Kruger put it to them, 'Am I to understand that our blacksmith is not allowed to bend angle-iron work so long as your man is in my employ?' Galbraith replied that it was so; their man would not work in Kruger's yard so long as Norfolk was engaged in bending angle-iron.

"On the 18th March, West again saw Galbraith and two other club-men who previously had been in Messrs. Kruger's employ. They came to say they

could not find an angle-iron smith; they then proposed that O'Neill should come and bend the angle-iron for them, which was declined by West. Before they left, they said they would look out again; West said come in after dinner; but they never came. On the same day, after the interview, a man went to Messrs. Kruger's yard who said he was a general worker, and West declined to have him, saying we have waited long enough for you and we shall take our own course,—meaning that Messrs. Krugers would employ what men they chose, and from what source they chose.

“The magistrates found each of the appellants guilty, being of opinion that each had endeavored to force Messrs. Kruger to alter their mode of conducting and carrying on their business as to Norfolk by threats and intimidation.

“The question for the opinion of the court was whether the magistrate was entitled to come to the conclusion that the offense charged against the appellants, and contemplated by Stat. 6 G. 4, c. 129, § 3, of endeavoring by threats and intimidation to force Kruger to make an alteration in the mode of carrying on his business had been made out.

“All of the judges were of opinion that a case was not made out against either O'Neill or Galbraith, that the language used was not threats within the meaning of the statute.”

Chief Justice Cockburn, *inter alia* said, “As regards Galbraith, the question turns on the conversation between him and the respondent; there are passages in it which bear the appearance of threats and coercion by the former, and are capable of being so construed if read alone; but looking at all the circumstances I am disposed to think that he went for the purpose of

discussing the matter rather than intimidate. At any rate there is so much doubt, Galbraith, being a person charged with a criminal offense, should have the benefit of it. If he had gone with his associates in the first instance to the respondent and stated that unless Norfolk was dismissed no members of the club would be allowed to work for him, this would have been intimidation. But the club had come to a resolution that no member should work at Kruger's works if Norfolk was allowed to remain at angle-iron work. Three of them had accordingly left Kruger's works, and one was being threatened for not leaving. Then it might well be that Galbraith, the end sought by the resolution having been in great measure gained, thought it desirable that some arrangement should be come to. In carrying out that intention he would naturally represent to the respondent the real state of things, reminding him of the resolution come to by the society, of the fact that three of the club-men had already left his service, and of the impossibility of getting any more club-men unless Norfolk were dismissed. The respondent very properly declined to be dictated to, but his refusal is not conclusive to show that Galbraith intended to coerce him. On the whole I think that Galbraith only meant to try and induce the respondent to come to terms. This is not an offense against Statute 6 G. 4, c. 129, § 3, and therefore the conviction as against Galbraith, as well as against O'Neill, must be quashed."

11. Threats and intimidation to compel a master to discharge employes agreeing not to go on strike. *Walsby v. Anley*.¹ "Case stated under Statute 20 and 21 Vict. c. 43, § 3. On the 9th June the defendant was con-

¹ *Walsby v. Anley*, 7 Jurist, N. C., 465.

victed, by William Corrie, Esq., one of the magistrates of the police courts of the metropolis sitting at Clerkenwell police court; under the 6 Geo. 4, c. 129, § 3, for unlawfully, on the 16th May, 1860, within the Metropolitan police district, in the county of Middlesex, by threats, endeavoring to force one Philip Anley, then and there carrying on the trade of a builder, to limit the description of his workmen; and the defendant was ordered to be imprisoned for one calendar month, with hard labor. It was proved by Philip Anley, the prosecutor, and other witnesses, that the prosecutor carried on the trade of a builder in Whitecross Street, Middlesex; that he employed about 100 workmen; that in the year 1859 there had been a strike of workmen employed in the building trade, and that he, the prosecutor, then resolved not to employ, and did not employ for some time, any workmen who declined to work under what was called 'the declaration,' that it was well understood in the trade what 'the declaration' was, being to the following effect.

'I declare that I am not now, nor will I during my engagement with you, become a member of or support any society which directly or indirectly interferes with the arrangements of this or any other establishment, or the hours or terms of labor, and that I recognize the right of employers and employed individually to make any trade engagements on which they may choose to agree.' On the day named in the convention the prosecutor had in his employment two or more men working under this 'declaration;' that on that day the defendant and two of the other workmen brought to the prosecutor a paper signed by the defendant and about thirty other workmen, of which the following is a copy.—'At a meeting of the joiners

in the employ of Mr. Anley, on Tuesday evening, the 15th May, 1860, it was resolved, 'that Mr. Anley be given to understand, that unless the men who are working under 'the declaration' in his shop be discharged, and we have a definite answer by dinner-time to that effect, we cease work immediately,' The defendant, in reply to questions put by the prosecutor, said they had no fault to find with him, his foreman or clerks, or with the wages he (the defendant) received; and when the prosecutor inquired what it was he wanted, he answered, 'you must discharge those two men who are working under the declaration, and if you do not, we will leave work.' The prosecutor answered, 'I will not be dictated to, and I will rather close my shop than submit to your dictation.' On the same day the defendant and all the workmen who had signed the paper left his employment, and had not returned up to the time of conviction. It was contended by the counsel for the defendant that what his client had done was not a threat within the meaning of the act of Parliament; but the magistrate, being of the opinion that it was an offense under the act, convicted the defendant, and stated this case for the opinion of the court whether the determination is erroneous in point of law."

Opinion of Chief Justice Cockburn. "I am decidedly of the opinion that every workman in the service of an employer is entitled to the free and unfettered exercise of his own discretion whether he will continue in that employment, *provided he has not entered into a contract for a specific period of service.* It rests with himself whether he will remain in such employment in conjunction with any other person or persons with whom he may not choose to work. And more than that, if several persons in the employment of a master

consider others in that employment obnoxious, either personally or on account of their character or conduct, they have a perfect right to put to their employer the alternative whether he will discharge the obnoxious person or persons and retain their service, or lose them and retain the obnoxious persons. But if men go further than that, and do not fairly put the alternative to the master, but seek to coerce him by the threat of doing something which is likely to operate to his injury if he does not discharge from his employment certain other persons against whom they have some objection, I think that they properly come within § 3 of Stat. 6 Geo., 4, c. 129, but the object was by threatening to leave his service at a particular conjuncture, to control the master as to the conduct of his business.' Therefore, although at first I doubted whether the conviction could be supported, and although I do not doubt that the appellant would be amenable under the term 'molesting' in the same clause of sec. 3, yet upon the whole, when we see that the purpose was not fairly to offer the alternative to the master, but that the resolution was presented with the purpose of driving out others from his employment, and of working an injury to him, it is an illegal proceeding and brings the appellants within the statute; and therefore I concur with the rest of the court in thinking that the conviction was right."

Crompton, J. said: "At first I entertained great doubts, on the ground that I did not see that the threat or intimidation employed was that of doing any unlawful act, or what the defendant had not a right to do. Any man may say to his master, 'It is my whim not to work with particular persons.' But then comes the question, whether any number of persons may combine to procure the discharge of fellow-

workmen by threatening that they will all leave in a body if those workmen are not discharged. It is a well known rule of law that one man may do what may not be done by a number of persons combined, when it tends to the injury of another. It is important to see how that rule is affected by Stat. 6 Geo. 4, c. 129. This statute, by repealing all enactments against combinations, sets up the common law. Then secs. 4 and 5 were necessary to restrain the effect of the repealing section, sec. 4, as to the meetings of workmen therein mentioned, and sec. 5, as to the meetings of masters therein mentioned, take both masters and workmen out of the operation of the common law. This makes me think that opinion is right, that these were offenses by the common law, and not offenses created by statute; and all the precedents of indictments for combinations to raise wages, and for other offenses of this nature, were framed on the common law, and not under any of the statutes. Then sec. 4 does not apply to this combination. The charge is, that the appellant, with others, threatened their master that they would leave his employment, with the object of forcing him to discharge certain other workmen. That is clearly illegal, upon the authority of *Reg. v. Rowlands*, (5 Cox, C. C., 466, 17, Q. B. 671; 6 Jur. 268) and *In re Perham* (5 Jur. N. S., 1212, 1221), if the question had arisen on the evidence, whether that was the object was a question for the magistrate to decide, and I think that upon the evidence his decision was right. The threat did not apply to persons coming into the employment of the master, if that could make any difference, but to persons in his employment; and the threat is that 'unless the men who are working under the declaration in his shop be discharged, and we have a definite answer by dinner-

time to that effect, we will cease work immediately.' It is as clear as possible that this was threatening to carry out an illegal conspiracy of all who signed the document. That is prohibited by the common law, and not allowed by sec. 4 of Stat. 6 Geo. 4, c. 129, the object being to alter the description of workmen who should continue in the employment of the master."

Hill J. said: "I have very little to add to the reasons which my brothers have given, in which I concur. The word 'threats' is to be construed with reference to the words which go before and follow, and accordingly there must be a threat to do an illegal act; so that the question is, whether this is an illegal act. I subscribe to what the Lord Chief Justice has said. If one man acting honestly, or several persons so acting, give their master the alternative of continuing them in his service or discharging others, it is not illegal; but if they act in combination to coerce their master to alter his mode of carrying on his business, or to limit the description of his workmen, they are guilty of an illegal conspiracy at common law: and there was abundant evidence before the magistrate that this was a threat to carry out an illegal combination, which would be indictable at common law." Conviction affirmed.

12. Intimidation—Molestation—Obstruction. *Reg. v. Druitt*.¹ Act of 6 Geo. 4, c. 149, § 3, as modified by Sec. 1, 22 Vict. c. 34.

"The defendants were members of a trade union of tailors. The workmen having at the instigation of the union, struck for wages, and the masters having employed work people, men and women, not being members of the union, the defendants, who were members of the managing committee of the

¹ *Reg. v. Druitt*, 10 Cox C. C. 592 (1867).

union, caused 'pickets' to be stationed about the doors of such employers to note work-people who went in and out, for the purpose of deterring them from continuing in such employ and inducing them to join the union. Proof was given of the use of insulting expressions and gestures used by 'the pickets' to the non-union work-people. Held to be 'intimidation,' 'molestation,' and 'obstruction,' within the meaning of the Statutes 6 Geo. 4, c. 129, § 3, and 22 Vict. c. 34, § 1."

While picketing will be the subject of a separate section, yet what is said about it in this case is given here so as not to break the continuity. Picketing is simply a form of intimidation.

This case is a very important one as giving the highest judicial interpretations of the above mentioned statutes, and from the additional fact that Lord Coleridge, now the Lord Chief Justice of England, was counsel for the defense, and that after his elevation to his present high position, he entertained the same opinions on the subject of strikes that he did when at the bar. He was not only overruled in this case, but also when elevated to the bench.

Ballantine Serg't, for the prosecution, stated the case to the jury.—"The charge was one of conspiracy, and, divested of all technical details, was that of interfering with and obstructing the business of other parties; such interference and obstructions being carried on by illegal means. The question the jury would have to decide upon the facts. All the men at the bar were operative tailors. Some question had arisen last year respecting wages between the operative and the master tailors. Upon that occasion the latter yielded, and it was hoped that that would put an end to the agitation. Unfortunately, however, it

had not that effect, for early in the present year fresh demands were made by the operatives. Whether those demands were just or not it was not for him to say. That the men had a right to make those demands, and, if considered exorbitant, that the masters had a right to refuse to comply with them, were points clearly admissible in law, and in point of fact that was the state of the case at that time—the operatives demanding certain terms, the masters refusing their demands. Under those circumstances, at an early period of the year, a strike was decided upon. It was right that the position of all parties connected with that strike—a term now perfectly well understood—should be placed before the jury and the world. There might be a great misapprehension existing on one side or the other. One could perfectly well understand the operatives refusing to work under certain terms; one could also understand the masters refusing to grant those terms; but it was not quite so easy to understand how operatives and masters could entertain a different opinion of each others interests. And yet there might be masters who would wish calmly to discuss the terms demanded of them, while, on the other hand, there might be among the men—as he believed there were here—a majority who were content with the terms at which they were working. Those not content formed themselves into a combination against the masters merely, but one affecting their own brother workmen—and probably affecting the latter to a far greater extent than it ever could affect the masters. This was undoubtedly the state of things between the masters and the operative tailors in the month of April in the present year—the latter demanding and the former refusing the increased wages. At that time a meeting was held, which was

attended by Druitt, Adamson and Lawrence, Druitt acted as president, Lawrence was vice-president and Adamson took an active part in the proceedings. Druitt, who was a man of great intelligence, addressed the meeting, and his remarks had very considerable weight with the audience. The strike was then declared, and it was explained by Druitt that that strike must be carried out upon a system, that system being a system of picketing. Druitt on that occasion laid it down that pickets must be put on, or that the strike could never be rendered effective. It was here necessary to explain what was meant by picketing—a system which he should think could not be allowed either in this or any civilized community in the world. It consisted in planting men—sometimes half a dozen in number—in the neighborhood of a master tailor's shop, and, as a great deal of tailoring was done for the masters out of doors, watching the persons who did that work as they arrived and left, the object being to prevent any work being done by operatives for the masters. The pickets remained in the neighborhood where they were placed from the time the shops were opened until they were closed. He would not explain the threats and acts of intimidation which had been used, because he believed that those who had committed those acts of violence had done so contrary to the wishes of the men who were now upon their trial. All he wanted was a legal verdict and decision upon the facts, and therefore he would not import into the case anything that had [not] a direct bearing upon the subject. The effect of the pickets was to create a source of annoyance to the masters, their customers, and visitors. When persons went into the shops they were watched, and opprobrious epithets were used towards those who were willing to take work. They

were, moreover, watched on their way home, and, whether by the words or actions of the pickets, they were held out to be persons who were mean-spirited, seeking an advantage over their brother operatives, and doing that which was dirty and contemptible in the eyes of their fellow men. This was part of the effects of the system. But there were others. For instance, the picket of six not unfrequently accumulated to 400 and 500 and this crowd surrounded the shops of the masters. That a great quantity of noise and annoyance naturally followed might very well be supposed; and as this went on continuously, the number of police in the neighborhood had to be increased in consequence of the fear of disturbances entertained by the inhabitants. Some forty or fifty additional police had, for instance, to be put on in the neighborhood of Conduit Street, and the metropolis generally had been kept for several months in a state of ferment, under a system perfectly illegal in any country where law was dominant over unrestricted power or fancied right. The resolution in favor of the strike having been adopted on the 22d of April, the parties commenced operations on the 23rd, and on the 24th the system was in full play. Naturally it would be so, for no fewer than 3000 men struck. The consequence was that the doors of the master tailors were literally blocked up. Every door was besieged. Every person who entered was watched, and everyone who left the shop was followed; and all this was carried out with a continuity which, if the system had anything like a laudable object in view, could not be considered as too highly praiseworthy. About a week afterwards another meeting was held at the Alhambra. At that meeting Druitt gave a graphic and humorous description of the plight in which the masters had

been placed by the pickets—how they had been compelled to go round to the backs of their houses with their goods, and how they had to drive about to a variety of places to deliver them and see their customers; and then he went on in a spirit of gratulation to say that the masters had had two-thirds of their business knocked off, and that by keeping up the picketing system the remainder one-third would speedily have to be relinquished. He then went on to promise the most favorable results to the operatives should the pickets be actively kept up. Then, as one committee could not carry out a system so extensive, sub-committees were formed, and about a dozen public houses were patronized by the operatives, each of which has been materially benefitted by the pickets meeting at these respective places of rendezvous, and there reporting the results of their proceedings. Then would arise this question—was that system illegal? Supposing that no tailors were engaged in the case—supposing, also, that no strike was going on—the fact of two or three people standing outside a man's private house, and looking to see who went in and came out of it, watching everybody and everything, would, as a matter of common sense, be a source of practical annoyance. But if a man kept a shop, and was in a similar manner watched by some two or three people, the annoyance would naturally become greater. The question, therefore, would arise whether, as a matter not of law, but of common sense, that was a species of annoyance which could be deemed a legal course of conduct for any parties to pursue. On the contrary, was it not more rational to suppose that in a country like England, where trade in all its branches flourished perhaps to an extent greater than in any other country in the world,

where there were skilled operatives like men now at the bar, questions between masters and men must arise? It was to be expected that there would always be a contest between capital and labor, and if capital were to bear sway there was no doubt that labor must be crushed. In every such case artizans and mechanics must be placed in a predicament, and when such a state of things took place he most thoroughly sympathized with those who had to do hard and laborious work, the more particularly if their labor were crushed down by capital. A law had been enacted to meet such a case as the present. The 6 Geo. 4, contained provisions which showed what the legislature had always empowered the operatives to do, and indeed the law upon that subject was perfectly well defined. In point of fact there was no doubt about it, the law in the matter having been most liberally expounded. It was, for instance, undoubted law that every mechanic and operative might combine with other mechanics and operatives for the purpose of securing to himself such rights and such increase of wages as he might think himself entitled to receive, and that so long as he resorted to no improper or illegal acts his rights would be countenanced. Under the circumstances the operative tailors had a perfect right to combine among themselves, and every one of them had an equal right to combine with others, and to advise as to what they thought was for the benefit of their trade, and to say: 'Until the masters choose to yield to our demand, we, the men, will not work in their service.' Up to that point everything would be legal. But the same act of Parliament which provided for these rights and powers upon the part of the operatives, in terms substantially the same, declared thus: That, while

maintaining those rights and powers, the operatives were neither to intimidate nor molest men who did not choose to join with them; in other words, that they were not to intimidate or molest masters who would not grant them their terms, or follow operatives who were willing to work for the terms. The only question in the case was this: Was the picketing system one of intimidation and molestation? because, if it was, then the defendants were guilty of an offense against the law, for which they were liable to be convicted."

Coleridge, Q. C., for the defense said; "They were there to discuss a very simple question of fact, and the whole matter for their consideration was, what was the true bearing of those facts, and what was the true and right inference to be drawn from them? It was the true and the right inference to be drawn from them. It was perfectly true, and he had never disputed it, that the system of pickets, call it what they might, was instituted, or, at any rate, was continued in consequence of the meeting held at the Alhambra, on the 22nd of April last; but it was instituted, not for intimidation or molestation, but for the purpose of bringing about a more satisfactory state of things between themselves and their employers, and it was quite true that Messrs. Druitt & Lawrence were not, in a certain sense, responsible for it. What was it that by this system of picketing they intended to accomplish? He maintained that the fanciful pictures which his learned friend had drawn really had no foundation in the case. It was clear that Messrs. Druitt & Lawrence, by the temper and tone of their speeches, had wished for nothing that was illegal to arise, and in reference to this he would read from the addresses which they gave at the meeting held at the

Alhambra on the date referred to. They wished to discuss the matter fairly with the masters, but they positively declined to meet them; they said, as it were: 'Here is our ultimatum—take that log or close the discussion.' And the discussion was closed accordingly, the men not being disposed to accept that which was offered to them. As workmen they had a perfect right to deal with the commodity which belonged to them—their labor; and the masters, on the other hand, had a perfect right to refuse it if they thought proper so to do. It was a question of labor and capital, and upon what terms that labor should be employed or rejected. The men had a right to say they would stand aloof from their employers until the terms were such as they could accept, and nobody would dare to say that a strike was not a legitimate mode of carrying out their views. If it were not for strikes each individual workman would be perfectly in the hands of his master, to be dealt with at his mercy, or in any dictatorial or abusive manner he might think fit. The strike, then, had been adopted in this case as a means of bringing the masters to the discussion of the questions at issue, and to determine what was only fair and reasonable. All that the workmen had endeavored to do from the first to the last of the transaction was not to dictate any particular terms nor any particular style of remuneration, but to bring the masters, as he had said, to a fair discussion of the matter, and to a proper adjustment of the dispute between them; of course, if they could not bring the masters to a fair discussion of their grievances, there would have been no other course open to them but to go to the workhouse, or to have submitted to anything that might be offered to them. They felt they had no power against the combined wealth of the eighty-eight firms unless they

could enlist a large mass of their workmen—not exactly those who were employed by the firms, but those who would be likely to accept work should any vacancy arise in them. If they could not interest and bring large masses of workmen to stand shoulder to shoulder, and to make the discussion a fair one between capital on the one hand and labor on the other, there would have been an end of it, and therefore, what he submitted to the jury was that they had a right to strike and go to other persons in like situations to themselves, and point out to them a course in order that they might take a similar view of it. That which Mr. Druitt and his fellow-workmen did, then, at the Alhambra was perfectly correct. The picket system after all was not so alarming as had been described, and the learned gentleman asked the jury to discriminate between the evidence that had been loosely given by policemen who had been engaged by the prosecution, by an auctioneer and others who had striven to show that there had been an excess of the law in respect to it. If the workmen had a right to strike, and to influence other people to come to their terms, the defendants could not be guilty of the charge alleged to them. How were they to find out who the workmen were and where they lived unless men were engaged to do so, by following them and going to their homes? The men had a perfect right to watch the workmen and to follow them home for the purpose of ascertaining where they lived, and then to use such arguments as would be likely to prevent them working for the same employer again. It was all very well to say that their conduct had been the means of frightening individuals, but where was one that had been so terrified? Not a single witness had been produced to show the terrorism that

had been exercised over them. There was not even a suggestion of loss of custom. After all, what did it amount to? These persons, being desirous of bringing their employers to a discussion of their grievances, had done that which they had a perfect right to do, and that which was within the bounds of the law. What was law for one class was law for another, and if the workmen had a right to combine, so had the masters. The masters had exercised their right, and with far greater cruelty than anything that could be done by the workmen. They had adopted the system of the 'lock-out,' and had turned upon the streets the whole of their workmen, which meant the reducing by starvation of hundreds of women and children, and spreading a wide-wasting calamity over the whole trades. The masters had a perfect right to reduce the number of their workpeople, and the workmen had a right to combine to make the most of their labor, so long as they did not coerce or intimidate them. If they only endeavored to bring their fellow-workmen to their views, and to get the masters to discuss the terms, they had a perfect right to combine, and they could not be indicted for conspiracy unless they overstepped the well-defined bounds of the law."

"Bramwell, B., to the jury.—A great number of irrelevant topics had been introduced into the inquiry in which they were engaged. All the talk they heard about the struggle of capital against labor was quite misplaced, and the censure passed on the masters in respect to the lockout was perfectly idle. *The men had a perfect right to strike*, and if the whole body of the men struck against the masters, why should not the whole body of masters strike against the men? The jury had heard a good deal about the power of the State, but the power of the State was no

more brought against these men than it was used in their favor. The question was whether they were guilty of the particular offense with which they were charged. The jury had to consider—no matter whose interests might be affected—whether the defendants had done that which was illegal. He would address a few general observations to them, some of which might appear to be truisms. When the law gave, or rather acknowledged, a right, it provided a punishment or remedy for the violation of that right. That was a cardinal rule, and an obvious one. The old expression that ‘there was no wrong without a remedy’ might also be interpreted to mean that there was also no right without a remedy. Sometimes the remedy was by a criminal proceeding, sometimes by a civil action, and sometimes by both. Having made those general remarks, he would make another, which was also familiar to all Englishmen—namely, that there was no right in this country under our laws so sacred as the right of personal liberty. No right of property or capital, about which there had been so much declamation, was so sacred or so carefully guarded by the law of this land as that of personal liberty. They were quite aware of the pains taken by the common law, by the writ, as it was called, of *habeas corpus*, and supplemented by statute, to secure to every man his personal freedom—that he should not be put in prison without lawful cause and that if he was, he should be brought before a competent magistrate within a given time and be set at liberty or undergo punishment. But that liberty was not liberty of the body only. It was also a liberty of the mind and will; and the liberty of a man’s mind and will, to say how he should bestow himself and his means, his talents, and his industry, was as much a

subject of the law's protection as was that of his body. Generally speaking, the way in which people had endeavored to control the operation of the minds of men was putting restraints on their bodies, and therefore we had not so many instances in which the liberty of the mind was vindicated as was that of the body. Still, if any set of men agree among themselves to coerce that liberty of mind and thought by compulsion and restraint, they would be guilty of a criminal offense, namely, that of conspiring against the liberty of mind and freedom of will of those towards whom they so conducted themselves. He was referring to coercion or compulsion—something that was unpleasant and annoying to the mind operated upon; and he laid it down as clear and undoubted law that if two or more persons agreed that they would by such means cooperate together against that liberty they would be guilty of an indictable offense. The public had an interest in the way in which a man disposed of his industry and his capital; and if two or more persons conspired by threats, intimidation, or molestation to deter or influence him in the way in which he should employ his industry, his talents, or his capital, they would be guilty of a criminal offense. *That was the common law of the land, and it had been in his opinion re-enacted by an act of Parliament, passed in the 6th year of the reign of George IV., which provided in effect that any person who should by threats, intimidation, molestation, or any other way, obstruct, force, or endeavor to force, any journeyman to depart from his hiring, or prevent any journeyman from hiring, should be guilty of an offense. That act was passed forty-one years ago, and by a statute of 1859 it was enacted that no workman merely by reason of endeavoring peaceably and in a reasonable manner, and*

without threat or intimidation, direct or indirect, to persuade others from working or ceasing to work should be guilty of an offense under the former act of Parliament. In other words, the second act said that should not be so if they did what they did in a reasonable and peaceful manner for the purpose of persuasion. Now, the defendants were indicted for conspiring together to do that which was in opposition to the law and the statutes he had described. At the outset, he could not help remarking that the learned and eminent counsel who had addressed the jury for the defendants had all said that they did not deny that their clients, Druitt, Adamson and Lawrence, had agreed that there should be pickets. He was of opinion that if picketing could be done in a way which excited no reasonable alarm, or did not coerce or annoy those who were the subjects of it, it would be no offense in law. It was perfectly lawful to endeavor to persuade persons who had not hitherto acted with them to do so, provided that persuasion did not take the shape of compulsion or coercion. What was the object of this picketing? Was it that the names and addresses of the non-striking workmen might be found out, with the view to their being addressed by reasonable argument and persuasion; or was it for the purpose of coercion and intimidation? Even the jury should be of opinion that the picket did nothing more than his duty as a picket, and if that duty did not extend to abusive language and gestures such as had been described, still, if that was calculated to have a deterring effect on the minds of ordinary persons by exposing them to *have their motions watched, and to encounter black looks*, that would not be permitted by the law of the land. The probabilities were that it was known to the leading members of the association

what the pickets were doing. It was in evidence that Druitt had visited the pickets from time to time. It would be very strange indeed if, while everybody else knew what they were doing, those who set the pickets to work should be the only persons who did not know what they were doing. There was very little doubt that Adamson, Lawrence and Druitt, had authorized by means of the resolution, the system of picketing. If the jury were satisfied that this system, though not carried beyond watching and observation, was still so serious a molestation and obstruction as to have an effect upon the minds of the work-people, then they ought to find these three men guilty. If they thought that the conduct of these men conduced to this effect, and that they knew it, then also they ought to find them guilty. If, upon the other hand, the jury should be of opinion that Adamson, Lawrence and Druitt, did not know what the pickets did, or that what the pickets did was not the natural consequences of men placed in such a situation, then they ought to be acquitted. So much with regard to three of the prisoners. With reference to the other five, if the jury believe the evidence of Lambert, then these five ought to be found guilty. It was said that the whole of the prisoners in acting as they had acted supposed themselves to be doing what was right. That might be so, but even supposing it to be true, they were still subject to the law."

The jury found Adamson, Lawrence and Druitt guilty, with a recommendation to mercy, and acquitted the rest.

13. Intimidation to compel employer to discharge an employe. *Shelbourne v. Oliver*.¹ "This was a case

¹*Shelbourne v. Oliver*, 13 Law Times Rep. (N. S.) 630 (1866).

stated under the 20 and 21 Vict. c. 43 upon a decision of justices at Nottingham, convicting the appellant under 6 Geo. 4. c. 129, §. 3, for having on the 10th July, 1865, at Basford, unlawfully by threats endeavored to force George Oliver to limit the description of his journeymen and workmen. It appears that the respondent carried on the business of a bleacher and trimmer, at Basford, and employed more than one hundred work-people; that Benjamin Samuel Oliver was the acting manager of the works, with power to employ and discharge workmen, and that a man named James was employed by Oliver as a journeyman; that the appellant was not in the employment of Oliver, but was in the service of another bleacher and trimmer in the neighborhood, and that he was a member and acted as vice president of a trades union society at Basford; that demands had been made by the men employed in different bleaching yards for an advance of wages, which demands were resisted by the masters, and that striking had taken place in some of such yards, and in Oliver's yard amongst others; that, after Oliver's yard had struck, James worked for a short period to finish some orders specially required to be finished, and subsequently to this Oliver agreed upon certain terms with his workmen, and some of those men came back to work, and found James at work, the men immediately gave over work, and, in answer to an inquiry by Oliver why they did so, a deputation from the society (of which deputation the appellant was one) went to Oliver's works and saw the manager, B. S. Oliver; that the appellant was the spokesman, and said to B. S. Oliver, 'We've come about James: we shall not allow James to work;' that B. S. Oliver replied, 'It is a very hard case; James was the only man who stayed to help me with the

special orders in hand;’ that the appellant said, ‘Well, its of no use; we have made up our minds; he shall not work; he’s a scoundrel; unless you discharge him your men shall not be allowed to work;’ that B. S. Oliver said, ‘If I’be compelled to do it, I must discharge him;’ that in consequence of what passed above, James, who was then at work, was immediately dismissed, and the next day Oliver’s men returned to work, James being discharged as above; that counter-evidence was given on behalf of the appellant but the justices found the facts as above set out.”

Chief Justice Cockburn, in reply to the statement of appellant’s counsel that the facts did not bring the case within the statute, for that all appellant did was to remonstrate with the respondent, said, “This is not the exercising of a man’s right to refuse to work, but it is the coming forward of a man who says, ‘your men shall not work if a particular person is employed.’”

The counsel said, “there is no endeavoring to limit the number or description of the workmen as contemplated by the statute.”

Cockburn, C. J.—“That is not so. He says in effect that, notwithstanding this man has well served you, and you are satisfied with him, yet we will not permit others to work for you unless you discharge him. I think this quite a case within the act.”

Blackburn, J.—“I think the case is quite clear, and as governed by the previous one of *Walsby v. Anley*.” Conviction affirmed.

14. Intimidation by Threats to Force a Master to Alter the Description of his Workmen. *Skinner v Kitch*.¹—“At a petty sessions for Bridgewater, held on the 26th of November, 1866, on the information of

¹ *Skinner v. Kitch*, 10 Cox C. C. 493 (1867).

William Kitch, the respondent, against Thomas Skinner, the appellant, under the 6 Geo. 4, c. 129, § 3, charging that he did on the 22d of October, 1866, at Bridgewater, unlawfully by threats endeavor to force the said respondent, who was then and there carrying on his business as a builder, to limit the description of his workmen, was heard and determined, and upon such hearing the said appellant was duly convicted of the said offense and sentenced to one month's imprisonment.

"The appellant required a case to be stated for the opinion of this *court*, whereupon it stated as follows :

"At the hearing it was proved on the part of the informant (the respondent) that he was a builder, residing in the said borough of Bridgewater. That on the 22d of October he had a man named James Jordan, a carpenter, in his employ, who had been with him for six years. He had also in his employ five other men as carpenters and joiners (naming them) who were all members of the General Union of Carpenters and Joiners. Jordan was not a member of the union.

"On the 22d October the appellant called at the respondent's house, and gave him personally a written notice in an envelope, of which the following is a copy :

' Tryen-street, Bridgewater.

Sir—I am requested by the committee of carpenters and joiners to give the men in your employ notice to come out on strike against James Jordan, unless he become a member of the above society, not being any way disrespectful to you or him, but being compelled by the union and laws. This notice will be carried out after the 27th inst., unless settled in accordance with the society's laws. I remain

Yours, most respectfully,

Mr. William Kitch. THOMAS SKINNER, Secretary.'

“On the 23d of October, Moore, Watling and Lutley called on the respondent and produced a notice that they had received in the same hand writing as that of the notice the respondent had received from the appellant, and purporting to bear his signature. There was no direct proof that either of these notices was in the handwriting of the appellant. The respondent’s week ends on a Friday, when he pays his workmen. The Friday following the receipt of the notice fell on the 26th of October. On that day Moore, Watling and Brogg were at the respondent’s house to be paid their wages.

“A conversation took place relating to the notice. The men left and came again the next morning. The respondent had another conversation with them, and they picked up their tools and left work. It is not at the respondent’s wish that they left him. Oaten was working at Wedmore that week. He returned on Saturday, the 27th, and the respondent saw him on the Monday morning, and had a conversation with him. He ceased working for the day, and ceased being a member of the society, and he is now working for the respondent. Up to the time when the respondent received the notice from the appellant he had heard nothing respecting Jordan from any other person. It was also proved that the appellant was the secretary of the local lodge—a society—and that he caused to be printed a notice, of which the following is a copy;

‘*Notice.*—Men are requested not to go to Mr. Kitch’s shop, because there is a strike there:” and which notice came into the hands of the respondent on the 27th of October, and it was also proved that the appellant caused the following document to be printed and circulated.

‘To members of General Union,

‘We, the members of the Bridgewater Lodge, do

under very pressing circumstances, appeal to the union for assistance to battle a magisterial action which has been entered against us by Kitch and Sons, builders, of this town, the cause of which is as follows; Five of our members have for some time past been working for Messrs. Kitch, there also being a non-society man there who was the sole cause of the forming of our lodge; the men's object being to get him to join us, they expressed their opinion to the committee that they could not work with him any longer unless he became a member. They came out against him. Kitch being determined to stand by the non-society man has entered an action against us, and has been to the rest of our employers to induce them not to employ those men who had left him, and is instituting every possible means to monopolize and obstruct our lodge and interest.

‘Trusting to the assistance of our fellow-members for a little support, having no claim for this case on the funds of the union, and prosecution taking place next week, we hope to have an early and favorable answer,’ (signed on behalf of Bridgewater Lodge)

THOMAS SKINNER, *Secretary*,
Tryen Street, Bridgewater, to whom please address
all communications; and P. O. O. made payable to
Henry Moore, Albert Street.” * * *

“We, however, being satisfied that the appellant did perfectly well know the nature and contents of the notice at the time he handed it to the respondent, and being also of opinion that such notice was intended to operate as a threat to the respondent that if he did not dismiss Jordan, or induce him to join the society, all other workmen who were society men would leave him, to his great inconvenience, gave our determination against the appellant in the manner before stated.

“The question of law arising on the above statements therefore is, whether the threat of the appel-

lant that the respondent should lose the services of nearly all his workmen unless he dismissed from his employ the non-society man or induce him to join the society, was a threat within the meaning of the 3rd section of the said act?"

Blackburn, J., said, "When one comes to look at the Act of Parliament, there can be no doubt that the conviction was right. The preamble, after reciting the repeal of the combination laws, and the object of those laws, and that they had not been found effectual, says: 'That whereas such combinations are injurious to trade and commerce, dangerous to the tranquility of the country, and especially prejudicial to the interests of all who are concerned in them; and whereas it is expedient to make further provision as well for the security and personal freedom of individual workmen in the disposal of their skill and labor, as for the security of the property and persons of masters and employes, and for that purpose to repeal the said act, and to enact other provisions and regulations in lieu thereof.' It then repeals the act, and then come the provisions of the enactment instead thereof; and the first part of section 3 is directed to persons 'who by threats endeavor to force other workmen to leave work and not to return to their work, or to prevent their hiring themselves, or accepting work, or who force or induce any persons to belong to an association or to contribute to a common fund.' And then the section proceeds to protect the masters. 'Or if any person shall by threats or intimidation, or by molesting or in any way obstructing another, force or endeavor to force any manufacturer or person carrying on a trade or business to make any alteration in his mode of regulating, managing, conducting, or carrying on such manufacture, trade or

business, or to limit the number of his apprentices, or the number or description of his journeymen, workmen, or servants, every person so offending, or aiding, abetting or assisting therein, shall be subject to imprisonment.' Now, one object of the section is plainly to protect the masters, as in the previous part the Legislature endeavored to protect the workmen. In the second part, I think the great object the Legislature had in view was to protect the masters where it was sought to compel them to limit the description of the workmen they employed to union men; and probably that was the principal object. I certainly think that it is within the words of the act, and plainly within the spirit. It is impossible to read these two clauses without seeing that it is a very beneficial provision, for a greater piece of tyranny than to insist that a master shall have his work stopped unless he consent to punish men who are his journeymen for refusing to belong to a union cannot well be. This case seems to have been twice decided already; and if these cases had not been decided, I should not have the slightest hesitation in deciding so for the first time. The case of *Walsby v. Anley* is one; and the case of *Shelbourne v. Oliver* (*Supra*) is the second, and they do not induce me to come to the decision I should have come to without them."

Shee and Lush, J. J. concurred in the above opinion.

14. Peaceable persuasion not unlawful. *Reg. v. Shepherd.*¹ "On an indictment under 6 Geo. 4, c. 129, § 3, for conspiracy to force workmen to leave their employment, the evidence being that the defendants merely waited outside the place where the workmen were employed, and tried to induce them not to work

¹ *Reg. v. Shepherd*, 11 Cox C. C. 325 (1869).

there, and that their conduct was civil and peaceable.

Held, that the question was whether they had endeavored to control the free action or overcome the free will of the workmen by force or intimidation. If there had been merely persuasion, no matter what the consequence of it was, peaceably and unaccompanied by menace or violence, this would not render the defendants amenable to *criminal justice* on such a charge, they being protected by 22 Vict. c. 34.

The prosecutor carried on business as a manufacturer of shoes, and employed 120 men. Some of his work-people were in the habit of taking materials, and making the goods at their own homes. In November, a misunderstanding arose respecting prices of labor, and a number of persons left his service. They gave no decided reason why they left, but simply returned their work, some of them bringing it back in a finished and others in an unfinished condition.

Lush, J. said "if the defendants had known the addresses of the men they might have gone round to them to persuade them from working, and this would have been perfectly legal. The question in the case was, whether they had done wrong by waiting for them in the street? To bring them within the terms of the act of 22 Vict., there must have been threats or molestations otherwise than by endeavoring peaceably and in a reasonable manner to persuade others to cease or abstain from work. In a similar case tried before him at Leeds, he remembered telling the jury that the defendants had a perfect right to persuade, and that in order to do so they must have access to the persons whom they wished to persuade. If they did that in a peaceable manner, their conduct would be lawful. In the case cited the parties charged were guilty of conduct such as any reasonable person

would call intimidation. They abused their fellow workmen, shouted and hooted at them, and were otherwise violent in their conduct. He agreed entirely with what Baron Bramwell had said; but the question was whether it applied to the present case. It was very important that they should be settled in regard to these matters. The better way would be to take the opinion of the jury on the case, and reserve the question for the Court of Criminal Appeal. In summing up, the learned judge said the defendants were charged with conspiring together to do an unlawful act. The act stated that if violence was used, either to persons or property, or threats, intimidation, molestation or obstruction then the persons offending brought themselves within the terms of the law. In this case the question which they would have to decide was, whether the defendants did endeavor to control the free agency, or overcome the free will of their fellow workmen by force or intimidation; and if so they would be guilty of the offense imputed to them; but if there had been merely persuasion no matter what the consequences were then it would not be at all an unlawful act.”¹

15. Intimidation and Coercion under act of 1871. Reg. v. Hibbert.² The defendants were indicted for “wickedly and unjustly devising, contriving and intending to injure and aggrieve the prosecutors; and

¹ 22 Vict. c. 34, referred to in the above case is as follows:—“No workman or other person, by reason merely of his entering into an agreement with workmen, or by reason merely of his endeavoring peaceably, and in a reasonable manner, and without threat or intimidation, direct or indirect, to persuade others to cease or abstain from work, shall be deemed or taken to be guilty of ‘molestation’ or ‘obstruction’ within the meaning of the said act of 6 Geo. 4.”

It would seem from the above opinion that “molestation” and “obstruction” are synonymous with intimidation.

² Reg. v. Hibbert, 13 Cox, C.C., 82 (1875).

to obstruct them in the pursuit of their lawful calling and business, unlawfully did, on the 13th day of November, A. D. 1874, within the jurisdiction of the Central Criminal Court, conspire, &c., to molest and obstruct the prosecutors, they being master cabinet makers and furniture manufacturers, in their lawful calling, by watching and besetting the house where the said prosecutors carried on business, situate, &c., with a view to coerce the prosecutors to dismiss and cease to employ divers workmen, to-wit, &c., against the form of the statute, &c.”

The other count stated that the defendants unlawfully, &c., contriving and intending to injure and aggrieve the workmen then being employed by the prosecutors, and to obstruct them in the pursuit of their lawful calling, unlawfully, &c., did conspire, &c., to molest and obstruct [here names of workmen given] and other workmen in their lawful calling, by watching and besetting the house and place of business, situate, &c., wherein the prosecutors then carried on their business, and where the said workmen then happened to be, with a view to coerce the said [names] and other workmen, and to induce them to quit their said employment.”

Cleasby, B.—“Conspiracy is an important branch of the criminal law, and may have for its object an injury to the State, when it becomes high treason, or an injury to some particular individual. It differs from other charges in this respect, that in other charges the intention to do a criminal act is not a crime of itself until something is done amounting to the doing or attempting to do some act to carry out that intention.” Conspiracy, however, consists simply in the agreement or confederacy to do some act, no matter whether it is done or not. We very often get facts sufficient to establish the guilt of parties

to a conspiracy other than acts which have been done in pursuance of it. For example, there may be a conspiracy to set fire to London at different places at once, and that conspiracy may be fully proved though no part of London has in fact been set on fire, inasmuch as the crime of conspiracy consists only as I have already said, in the agreement or confederacy to do something. That particular branch of conspiracy affecting the relations of employers and employed has attracted a great deal of attention, and the legislature has passed numerous acts of Parliament upon the subject which have been productive of a great deal of difficulty. There is now however, a very valuable report which embraces this subject amongst others, in which the difficulties arising from the imperfect nature of the legislature have been recognized; and the present state of the criminal law in this respect has been fully explained by the Lord Chief Justice, the Recorder of London, and other learned judges. In this case, I am happy to say, we escape many of these difficulties, and the question at issue depends on the Criminal Law Amendment Act, 1871. It brings before you, gentlemen of the jury, matters of fact which you will have to consider, questions of law which it will be for me to decide. That Act makes it an offense to molest and obstruct any person with a view to coerce him, if a workman, to quit his employment, or if a master, to alter his mode of carrying on business; but the meaning of the words molestation or obstruction is not left for you or me to consider, for it is defined in the act itself to be the persistent following a workman about from place to place, or the hiding of a workman's tools.¹ It is also a molestation or obstruction

¹ Hiding a workman's tools is called "rattening." Black's Law Dictionary.

to watch or beset the house or other place where such person resides, or works, or carries on business, or happens to be, or the approach to such house or place, or if with two or more other persons he follows such person in a disorderly manner in or through any street or road. It will therefore be for you to consider whether it has been made out to your satisfaction that the defendants watched and beset the premises of Messrs. Jackson and Graham; or the approaches thereto, with a view to coerce them, the employers, to alter their mode of carrying on their business, or their workmen to quit their employment. The two questions therefore, which you will have to answer will be first, was there a molestation by watching and besetting the premises in question or the approaches thereto; secondly, was the molestation effected in such a manner and under such circumstances that you are satisfied that the intention of the defendants was by such molestation to coerce the masters to alter their mode of doing business, or the workmen to quit their employment. It has been contended on behalf of the defendants that the prosecution has not satisfactorily established the intention of the defendants to coerce. This is not a point upon which I can reserve a case, as I think it is your duty to determine where persuasion ends and coercion begins. Coercion might either be effected by physical force [or] by the operation of fear upon the mind. It is possible that there might be such a molestation by watching and besetting premises as might be expected to and would operate upon the mind so as to take away the liberty of will, by giving rise to a fear of violence by threats or to some apprehension of loss or ruin, or to feelings of annoyance. Picketing, that is the watching and speaking to the workmen, as they come and go from their employ-

ment, to induce them to leave their service, is not necessarily unlawful; nor is it unlawful to use terms of persuasion towards them to accomplish that object; but if the watching and besetting is carried on to such a length and to such an extent that it occasions a dread of loss, it would be unlawful. For instance, suppose it is proved that there was a confederacy, which rendered it impossible for the employers to continue their business from the want of workmen and men seeking employment from them, this would be an indictable offense. In conclusion, it lies upon the prosecution to show to your satisfaction that the watching and besetting spoken of in the present case [was] done in such a manner and under such circumstances from which you can reasonably conclude that the defendants intended to coerce Messrs. Jackson and Graham to alter their mode of carrying on business; if this is done you will find the defendants guilty. On the other hand, if you find that there was merely a combination on the part of the workmen, and a struggle as to whether they or their employers should hold out the longest, then you will acquit the defendants of this charge."

Verdict of guilty against all the defendants. The court remarked that he concurred in the verdict.

16. Conspiracy—Intimidation—Picketing under Act of 1875. *Reg. v. Bauld*.¹—The indictment in substance charged the defendants with having unlawfully conspired together by means of violence and intimidation and divers other unlawful means, and by watching and besetting the premises of Messrs. Easton & Anderson, engineers, of Erith and Southwark, and the approaches thereto, to compel divers workmen then employed by

¹ *Reg. v. Bauld*, 13 Cox C. C. 282 (1876).

Messrs. Easton & Anderson, or who might thereafter be willing to offer themselves for employment, to quit their employment and abstain from working or offering themselves for work to the said firm. There were also counts charging the defendants with conspiring together by watching and besetting the premises of Messrs. Easton & Anderson to endeavor to compel Messrs. Easton & Anderson to alter the mode of carrying on their business, and to pay by time and not by piece.

In reply to the remark from counsel for the defendants that, "If it were merely done for the purpose of persuading the men to quit their employment it would not be illegal,"—

Huddleston, B., said: "I cannot assent to that view of the law. The statute allows watching or attending near a place for the purpose of obtaining or communicating information, but this is the only exception."

There was an application on behalf of the defendants for a postponement, which was resisted by the Crown.

Huddleston, B.—"I believe there are a great many persons who are interested in this question, and that there is a very great desire on the part of all parties interested to keep within the pale of the law. I believe this to be a feeling common to both masters and men. I think the men are very often found to be anxious to keep within the pale of the law. They think they have certain rights, and undoubtedly they have certain rights. Independently of the law passed last session there has in recent years been a great change in the law of conspiracy and the whole of the law relating to trade combinations has undergone a very great change indeed. The act passed last year prevents any person being indicted for a conspiracy except in particular cases, that is to say, any act in

contemplation or furtherance of a trade dispute between employer and workmen shall not be indicted as a conspiracy, unless it is an act which if committed by one person, could be punished as a crime, and the statute then defines what a crime is. The statute then goes on to declare what persons are not permitted to do. They have no right to compel any other person to abstain from doing any act which they have a legal right to do, and for that purpose to watch or beset the house or other place where such person or persons reside. Now on this rests the great question of picketing. No doubt the men are in the habit of taking an erroneous view of what they may be permitted to do in the shape of picketing; and it is a very serious question no doubt. They have no right to watch or beset the house or other place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, for the purpose of compelling any person to abstain from doing that which he has a legal right to do. Then, although the act says watching and besetting shall not be permitted for the purpose of compelling persons in such cases, there is the other side of the question, which is this, where the men watch merely to obtain or communicate information. The meaning of that is this: When the men combine, as they have a perfect right to do, they may say, 'we won't work except for certain wages; we won't work except upon certain terms;' and they have a right to agree together for this purpose; but, there may be amongst their number some persons disposed to enter into an arrangement to receive money from the funds raised for the purposes of supporting the strike and then to go to work and also get wages from the masters at the same time. This would certainly be a hardship of which the men might

complain; and, therefore, the legislature enacted that if their watching and besetting was only for the purpose of watching and besetting their own men who should so act, it is not a watching within the meaning of the act of Parliament. But this watching and besetting is a very serious offense unless it is confined to merely obtaining and communicating information, and this cannot be too well known. I must consider the application made to me by the men for the postponement of this trial. I understand them to say that they received no information of the seventeen new witnesses to be called until last Monday, or of the new counts in the indictment." * * * "The law of conspiracy with reference to differences between masters and men has undergone a very great alteration, and the men know perfectly well that the legislature met them in the most perfectly honest manner, and invited their assistance in considering what should be law on this subject, and the act of Parliament passed last session was the result of anxious deliberation on the part of all parties, no matter to which political party they belonged, and in that deliberation they were assisted by those able representatives of the workingmen who habitually advocate their cause in Parliament, and also by delegates from their own body, and this deliberation led those who prepared the bill to frame it so that the men might understand the length to which they would be justified in going in support of what they felt to be their rights. I am one of those who held that the men had very good grounds to urge some alteration in the statute law as it had existed, and I may say that a milder and fairer exposition of the law never was made than appears in the statute under which this indictment is framed. And I would invite the men in their own

interests to consider how much the legislature has done for them, and if they themselves feel that by their own acts, they have gone beyond the law which they themselves assisted in making, to do what, I may say, they are bound to do, admit it frankly, and place themselves under the law as men who are ready to accept the consequences of that act. If on the other hand they fail to recognize any error and hesitate to admit it, and claim to be justified in the course they have adopted, they should be ready with the very able legal assistance they possess, to have this matter fully investigated, and for my own part I will give it my best consideration, and the jury and myself will try it out with the greatest care. But I cannot accede to the application for the postponement which has been made to me."

Part of the defendants pleaded guilty and part not guilty.

* * * Huddleston, B.—"The learned counsel for the prosecution having very properly stated that, looking at the evidence, he does not feel justified in saying that your acts so connect you with the acts of the other men as to make it apparent that you were part of the combination with which the other men were charged, I must say that to me personally it gives a great deal of pain to see respectable men standing in the position of criminals, and I do hope, from the frank manner in which they have acknowledged their having trespassed beyond the bounds of the law, there is an indication, as far as they are concerned, not only not again to do it themselves, but to do more, to use that influence which, as men of intelligence, they possess over others, and prevent them from doing the same thing. The men should know this, that the law is now perfectly fair and equal as

between them and the masters. I remember the time when a breach of contract was only a question of civil remedy as far as the master was concerned ; but if the men broke their contract, they might be visited with imprisonment for three months, and were not allowed to give evidence in their own behalf. That was the law ; but this act of Parliament, as I have already pointed out, is an act of Parliament which has undergone the greatest consideration. There was a commission granted in 1870 to consider the subject, and in consequence some of the most objectionable parts of the previous law were done away with. A subsequent statute was passed, and of this statute the men rightly or wrongly felt they had a ground of complaint and the Legislature heard their complaint, and they recognized the right the men had to some alteration in legislation, and the act of last session was passed. I have had some experience in a recent case of this kind, tried at Nottingham, in which many of the men felt, and the principal persons amongst the men got them to fully recognize, in a manly and frank manner, the great desire on the part of the Legislature to consider the real grievances of the men.

Now, what I understand to be the dispute between you and the masters is this, that the masters want certain work to be done by piecework, and certain hours, and you say—

Parry, Serjt.—“There is no dispute as to the hours my Lord.”

Huddleston, B.—“Well it does not signify. The masters have a perfect right to say that, and the men have a perfect right to say, ‘We won’t do piecework,’ and the law recognizes that every man has a right to be protected in that which he has a legal right to do, and which he has a right to abstain from doing, anything

that is not an improper act. The master has the right to say, 'I will not pay only such and such wages, and I require you to work certain hours and if you choose to accept it you may.' The men have a perfect right to say, 'No; we do not intend to work for such wages and for so long a time.' The masters have the right to give what they think fit, and the men have a right to agree amongst themselves what they will take. But while the law secures to them that right it imperatively prevents all from exercising tyranny over others, and while you may choose the arrangement of your own hours and terms, you have not a right to combine for the purpose of imposing upon others a restriction from which you claim to be exempt. And the same thing applies to the masters. A master has no right to take proceedings to require other masters to adopt his views; that is a legal offense. And the men have no right to prevent others doing what they think right, or doing what they themselves would wish, and it is for this purpose the law prescribes exactly what must be done. You have a perfect right to advocate your own views by argument and reasoning, but the law says you must not do this: 'You must not compel any person to abstain from doing any act which is not an act that he has no right to do.' The law also says you must not do this. You must not use violence or intimidation either to man, or his wife, or his children, and you must not injure his property. You must not persistently follow any person about from place to place. This being very much like picketing, in your own interest I would urge upon you that picketing is a most dangerous course to adopt. You must not persistently follow a man. You must not in short 'dodge' a man from place to place so as to interfere with his personal liberty to do

what he likes. You must not hide his tools, or his cloths or any property owned or used by him, or deprive or hinder him of the use of them. All this is reasonable enough. You must not watch or beset his house, or his works, or their approaches. Now when this act of Parliament was under consideration, the men, through their delegates, urged upon the government then passing it that instances might arise where men might lawfully 'watch and beset,' and a proviso was introduced into this act which says, 'Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.' And this means no doubt that occasionally you may, in differences of this kind, find some who would, so to speak, be 'traitors' to you who, while getting their share of the money raised for the support of those on strike, go and work as well and thus get money from both sides. You would, of course, wish to discover such men. But it must be a 'watching and besetting' for some such lawful purpose to be within the meaning of the act. You will, however, see how difficult and dangerous it is in your effort not to do what is wrong, and to guard against the abuse of the practice. If you wish by your own conduct to assert your rights to 'picket,' you are almost certain to get into difficulty; for, whatever you may intend, there will be some among you who will go beyond what is intended as 'watching and besetting' within the exemption of the act. This picketing in which you have been engaged is illegal. Your own advocate declares it to be so and it is so declared by the act of Parliament. I know perfectly well that it is said you

did not intend to go beyond the act, and I believe you did not, and that you did not intend to do that which is criminal. You must feel, and anyone who has looked at the depositions must feel, that there can be no doubt but that some of you at least have gone far beyond the law, and it is manly of you to acknowledge it. You have broken the law, and you are charged with a conspiracy. The law of conspiracy was not clearly understood, but this act of Parliament defined it and said *that a combination by two or more persons to do an act which if done by one would be a crime is a criminal conspiracy*. That is to say, you may agree between yourselves to take certain wages and to do certain work, but unless you agree to do some act, which act in itself is a crime, it is not a conspiracy. But if you agree together to use violence to compel a person to do something he is not obliged to do, you combine to do an act which is forbidden by the law and it is an illegal conspiracy. It would be a most painful thing for the respectable men I see here to be put in Canterbury Jail with all kinds of criminals for several months. Now, do let me point out to you that, while on the one hand you have gone beyond the law and very properly acknowledged your error, you must recognize the rights of others to do that which they recognize and think right. And let me say that, while I readily accede to the course suggested, that you enter into your own recognizances to come up to receive judgment when called upon to do so, I require it to be distinctly understood that all the proceedings which have given rise to this trial are to cease. You will only be called up to receive judgment if you violate the law, in which case you cannot expect any consideration so to be held out to you. If you violate the law you are liable to be called up and

sentenced at any time. I have no doubt that you mean to abide fairly by what you have undertaken and to obey the law. Having regard generally to picketing and striking, depend upon it *there are other and better means by which differences between capital and labor may be adjusted.*"

17. Conspiracy—Molestation—Criminal Law Amendment Act 34 and 35 Victory, c. 32 Reg. v. Bunn.¹ The defendants, servants of a gas company under contract of service, being offended by the dismissal of a fellow servant, agreed together to quit the service of their employers, without notice and in breach of their contracts of service, by reason of which the company were seriously impeded in the conduct of their business.

Being indicted for a conspiracy, it was contended that the statute 34 and 35 Victoria, c. 32, having determined that no act shall be illegal merely by reason of its being in restraint of trade, and having also defined the offense of "obstructing" or "molesting" and otherwise determined what shall be deemed to be offenses as between masters and servants, had virtually declared all other acts not to be punishable.

But held, that the provisions of the statute had not affected the common law of conspiracy, for which an indictment would lie.

The questions submitted to the jury were as follows:

FIRST. Did the defendants agree together to force the company against its will to employ a man it objected to employ?

SECOND. If so, was this sought to be done by improper threats or molestation?

THIRD. Molestation being anything done with improper intent, to the unjustifiable annoyance and

¹Reg. v. Bunn, *et al*, 12 Cox, C. C. 316 (1872).

interference with the master in the conduct of his business, and such as would be likely to have a deterring effect on a man of ordinary nerve—was a quitting of the employ without notice, and breaking of the contract of service, to the undoubtedly serious injury of the master, a molestation within the above meaning of the term?

FOURTH. Did the defendants agree together to force their employer to do what they desired by such a molestation?

FIFTH. Did the defendants endeavor to enforce their object by simultaneously breaking their contracts of service?

A conspiracy may be to do an unlawful act, or to do a lawful act by unlawful means. If the jury deemed the object lawful, they would further say if the means employed were lawful or unlawful.

Brett, J., in summing up to the jury said: "The defendants are charged with having entered into a criminal conspiracy. It has been stated to you that the result of that conspiracy might have been, if not otherwise prevented, supposing it to have been successful, most lamentable to the public. And it has been stated to you on the other side, that even though that may be so, you ought not [to] allow yourselves, in finding a verdict of guilty or not guilty, to be influenced by any such consideration. I entirely agree with the latter part of that observation. You must not allow yourselves to be influenced in coming to a conclusion whether these defendants are guilty or not by the view that from there being an agreement between the defendants to cease work it would have had a most lamentable effect upon the city and the public. I entirely agree that so far as these men were the servants of the gas company, they had no obligation

whatever with regard to the public; that they had no greater obligation to the public than anybody else had, than any of us. They had entered into no agreement with the public; the public paid them nothing for their labor, and they were under no further obligation to the public than any other of the Queen's subjects. The question which you will have to determine is whether, as servants of the gas company, they or some of them have been guilty of a criminal conspiracy. In order to come to that conclusion, you must answer in the affirmative or negative the questions which I shall ask you. If you answer them in one way the defendants are guilty and it will be your duty to say that they are guilty. But if you answer them in another way it will be your duty to say they are not guilty. The definition of a conspiracy generally is this: *If persons agree together to do some unlawful thing, and proceed to do it, they are guilty of conspiracy; or if they agree to do a lawful thing by unlawful means, and proceed to carry out their agreement by those means they are guilty of a conspiracy.* I say if they proceed to carry out, (for it signifies not whether they do carry them out), they are guilty of conspiracy. Therefore, a conspiracy consists of an agreement between two or more persons—an agreement, observe—to do an unlawful thing, or an agreement to do that which is lawful by unlawful means. For instance, if two persons were to agree that one or both of them should shoot another, that would be clearly doing an unlawful thing; or, if two persons should agree together that one of them should, by making false representations as to his means, induce a young woman to marry him. Although the fact of inducing a young woman to marry is not an unlawful thing, yet if two persons were to induce

a. young person to marry one of them by false representations, that would be an agreement between them to do a lawful thing by unlawful means. These instances will enable you to understand the law as I am putting it to you. Therefore, you will have to consider whether these defendants, or two of them, or more, have agreed together to do an unlawful act or to do a lawful act by unlawful means. Upon an indictment for a conspiracy, you cannot find one man only guilty, because if one man only has been concerned in a matter, there is no agreement. But if five men are before you indicted for a conspiracy, you are not bound to find them all guilty; you may draw a distinction between them, you may come to the conclusion that two of them, or three of them, or that all five of them, are guilty. These men are indicted for a conspiracy, not only between themselves, as though they were the only conspirators, but they are indicted for conspiring among themselves and with other persons, although as those other persons are not here, you cannot, of course, find those other persons guilty so as to make them amenable to the law. But it does not follow because other persons were guilty with the defendants, that if you think the defendants guilty, you should not find them guilty. You are to deal with their case alone, and with due regard to the case of each of them. Now I shall ask your opinion as to this conspiracy in two forms. You have heard a discussion with regard to the mode in which this conspiracy is charged. It is charged in a different form, perhaps not very substantially different, but still in a different form, and I shall ask you, with regard to both, whether there is the one kind of conspiracy to which I shall first ask your opinion, or whether there is the other kind of conspi-

racy as to which I shall subsequently ask you. Now I shall first ask you this: was there an agreement, or combination, which is practically the same thing, between the defendants, or between the defendants and others, or by some of them, to force Mr. Trewby, or the Gas Company, to conduct the business of the company contrary to their own will by an improper threat, or improper molestation; *and I tell you that there is improper molestation if there is anything done with unjustifiable interference, and which in your judgment would have the effect of annoying or interfering with the minds of the persons carrying on such a business as this Gas Company was conducting.* It is not necessary, in order that there should be a conspiracy to molest, that any one should be personally molested. It is enough if you should think that a molestation was designed and agreed upon with improper intent, and which in your judgment would be an annoyance and an unjustifiable interference, and would in your belief be likely to have a deterring effect upon the minds of the employers,—that is to say, of Mr. Trewby or the gas company. *I tell you that the mere fact of these men being members of a trades-union is not illegal and ought not [to] be pressed against them in the least.* The mere fact of their leaving their work—although they were bound by contract and although they broke their contract—I say the mere fact of their leaving their work and breaking their contract—is not a sufficient ground for you to find them guilty upon this indictment. This would be of no consequence of itself, but only as evidence of something else. *But if there was an agreement among the defendants by improper molestation to control the will of the employers, then I tell you that would be an illegal conspiracy at common law, and that such an offense is not abrogated*

by the Criminal Law Amendment Act, which you have heard referred to. This is a charge of conspiracy at common law, and if you think that there was an agreement and combination between the defendants, or some of them, and others, to interfere with the masters by molesting them, so as to control their will; and if you think that the molestation which was so agreed upon was such as would be likely, in the minds of men of ordinary nerve, to deter them from carrying on their business according to their own will, then I say that is an illegal conspiracy, for which these defendants are liable. That, gentlemen, is as to the first set of counts. But this conspiracy is charged in another form, and in that form the real charge is that they either agreed to do an unlawful act, or to do a lawful act by unlawful means; and it seems to me more naturally to fall under the latter class. I shall, therefore, ask you whether there was an agreement or combination between the defendants and others to hinder and prevent the company from carrying on and exercising their business, by means of the men simultaneously breaking the contracts of service which they had entered into with the company, and I tell you that the breach without just cause of such contracts, as have been proved in this case, is an illegal act by the servant who does it. It is an illegal act, and what is more it is a criminal act—that is to say, it is an act which makes each of them liable to the criminal law—and therefore if they did agree to interfere with the exercise of their employer's business by simultaneously breaking such contracts—even if you were to suppose that to interfere with the exercise of their employer's business was a lawful thing for them to do—yet if they agreed and combined to do that lawful act by the unlawful means of simultaneously breaking

all these contracts, they were then agreeing to do that which may be assumed to be a lawful act by unlawful means, and that would bring them within the definition of a conspiracy. In such case you will say, if you think that so it was, that they were guilty upon the second set of counts. Now, with regard to all this, what is the evidence? You find that these men and others, making up the number of five hundred men, were all in the employment of this Gas Company, and that Mr. Trewby was the foreman or person in authority managing for the company; and you find that there was another gas company, called the Independent Gas Company, which carried on its business at Fulham; and the first thing that you know is that on the 28th of November a man at Fulham was discharged from the gas works there, and that in consequence of that there was a strike of sixty-two workmen at those works at Fulham. That is a circumstance which, because it is referred to, and because it may have been a motive and a ground of action, you must take notice of. Then you have it that, on the night of that same 28th of November, on the night of that same day when this thing happened at Fulham, in what they call the long spell at the works of the prosecuting company—that is, between twelve and half-past twelve at night—there was a meeting on the works of the night gang. The men who are on the night gang, some two hundred and fifty of them, do not work all the night, but they must remain on the premises all the night; but between twelve and half-past twelve is a time when they are not at work and is the longest interval, as I should judge from the meaning of the terms ‘long spell,’ at which they are not at work during the night. There was a meeting on that night. On Friday night, the 29th of November,

that is, the next night, the defendant Wilson came in and made a statement. He said that he was appointed delegate for that night, and must go to the society; that the meeting of the society would be held at some place near Finsbury square. Now, what is a delegate? He is, as you have been told, a person—one of the workmen, or one of the members of the Trade Union—who is elected by his fellows at the works of a particular firm, to go and represent them (that is, the workmen in that employ,) at a meeting of the union, to agree with the other delegates as to what is to be done, and to come back and inform his own constituents what it is they are to do. Then, besides the dismissal of the men at the Fulham works, you have the dismissal of Dilley at those works. Dilley was dismissed because he had refused to do certain work which he was ordered to do, and the reason which he gave at the time was, that it was work which he was not allowed by his union to do. Therefore, the case stands thus; the men at Fulham had been dismissed, upon which sixty-two men had struck; a man had been dismissed from these works for not doing work which he was not allowed to do according to the laws of the association to which he belonged. Wilson is a delegate from the workmen from these works to the union; he goes [on] to say that Dilley is to take his pay on Saturday morning, that is, at the end of the week, and if he was paid up to Friday night he was to take it and say no more about it. That was at first not very clear, but it was more fully explained afterwards. The meaning of what Wilson said you are to gather from these facts, that in every week the company keep back one day's pay. It is not stated why, but you know very often it is for subscription to reading-rooms, and for the assistance of men when they are

sick. I don't know why, but for some reason they keep it back. Not that they do not pay afterwards all that is due; but one day's pay is kept back out of the six that he may earn. If Dilley got his whole pay, therefore, it would show that he was discharged, not that he was to be kept on. If he was paid one day short, it would show that they were keeping him on, and then, so far as Dilley was concerned, there was no grievance at all; but if he got his whole pay then it would show that he was discharged. Now, you will see what was to happen. Wilson said that according to the opinion, not of the men in these works only, but of all the delegates where he had been (for he had said this on the 29th and he must have been on the 28th at the delegates' meeting), that if Dilley was paid all his back time he was to take it, and no further notice was to be taken of it until they heard from the delegate meeting. He said further that something had passed at the delegate meeting which he would not divulge to any one, not to his own father if he was to arise out of his grave. Now, what do you infer from these facts, and from this statement of Wilson's? Nothing was to be done if Dilley was paid in full. If he was paid in full, it showed that he was discharged, and then there was a grievance. At the first blush it would be supposed if that he was paid in full and discharged, the men would be called upon to act at once. But no; the opinion of the delegates is that under these circumstances you are not to act at once, but what you are to do is to wait until you hear from the delegate meeting. And something passed at the delegate meeting which was secret; because, of course, the form of speech about his father was mere exaggeration on the part of Wilson; it meant that the decision of the delegates

was to be kept secret. 'You are not to act now, you are to act when the delegates send you word.' Is not that the meaning of it? The inference for you to consider is whether the meaning is not—'Don't you go out now, because there may be arrangements to be made. If this man is discharged, and you are so ordered by the delegates, you will have to go out; but it will be when all the other men who are members of the union, and not only you at these works, are going out at the same time.' It is for you, of course, as a jury exercising your judgment fairly as between these defendants and the law, to say what is the meaning of it; and what is the meaning of that which Wilson said. The witness who proves it says, 'I cannot say the other defendants were there. I believe that we were all there, but I can't say.' Then he is cross-examined, and he says, 'Jones on the Thursday night had ceased to be a delegate, and Wilson was the delegate for that night, but he was elected as a delegate for that night only.' If so it was on the Thursday night that Wilson attended the meeting of delegates. Before that night Dilley had been discharged, or was likely to be discharged, and the men at Fulham had been discharged. Then he comes back from the meeting of delegates, and on the 29th this is the information that he gives:—Now we have what happened on the Monday morning. The first person that had notice, on the part of the employers, of anything likely to happen, was not Mr. Trewby, but the other man, Leonard. He says; 'I am foreman of stokers—On Monday, the 2nd of December, I got to the works at ten minutes to six; when I got there I found a great many of the day gang there already; they were standing in the retort house and in the lobbies. I waited for some time to see if they

would begin work. Some observations were made, and I then went and fetched Mr. Trewby.' Then you have Mr. Trewby. He says the night gang go on at about five, and come off at about half-past five the next morning; they work for about five hours. The change of the gangs takes place between six and seven; some come at six, and some at half past six, and some at seven; those are for different portions of the process. On the 22nd of November, he says, the matter was reported about Dilley. 'On Monday, the 2nd of December, Collier, the foreman, came to me about a quarter to seven in the morning. In consequence of what he told me, I went to the four retort-houses on the works; this was a quarter to seven o'clock. I saw the night and day gangs there.' Therefore when Mr. Trewby was sent for there must have been this unusual state of things happening; that is to say, that being a quarter to seven, when the night gang would have gone home to bed and the day gang to work, you have the whole five hundred men there; the night gang had stayed on and the day gang had arrived. Before the gang begins to work they usually change their clothing. None of the day gang had changed their clothing in order to go to work, so that you have two hundred and fifty men all doing that which was contrary to the rules. Mr. Trewby further says: 'I asked the men what they wanted to see me about;' so that you see the message which had been taken to him was not merely that the men were doing something which he was bound to look after, but that they wanted to see him; and the message sent was not that one man wanted to see him, but that they all wanted to see him; and when he goes to see them he asks what they wanted to see him about. He says: 'I noticed there

Jones and Wilson.' You recollect, gentlemen, that Wilson is the man that had been to the delegates and made that statement on Friday night the 29th. 'I noticed Jones and Wilson standing close to me; I noticed Webb there.' Now Webb is a person who took a prominent part, but he is not one of the defendants; he is not there. They said they wanted to see me about Dilley's case. Webb was the first spokesman. I asked 'where are the day gang?' Jones said: (one of the defendants) 'The day gang are all here.' I said, 'why don't you go to work?'" Now what was Jones' answer? Not 'I have decided,' but 'We have decided not to go to work until Dilley is reinstated.' He said that in the hearing of the five hundred men who had sent to the superintendent, whom they called the govenor, to see them. There they are in front of him. He says, 'What do you want with me?' Webb stands forward as the first spokesman. Jones stands forward as a spokesman, and Jones does not say 'I have decided,' but in the face of all these five hundred men he says, 'We have decided not to go to work until Dilley is reinstated.' Wilson spoke to Trewby to the same effect; Webb spoke to the same effect. Therefore you have Wilson the defendant, Jones the defendant, and Webb, who is not here, stepping as it were forward in front of these other workmen, and the statement they all make is, 'We have decided not to go to work until Dilley is reinstated.' 'I said to them (that is, to Webb), as he belongs to the night gang, 'You should have left the works.' It was then past seven o'clock. I said, 'The time has now elapsed when the whole of you should have gone to your work. The Company have always behaved liberally towards you. They have conceded all you have asked from time to time, and I call upon all of you who are

well disposed towards the Company to go on with your work.' What was it that Jones said? 'Yes, ask them that.' Was that sarcasm? Mr. Trewby says, 'I ask all of you who are well disposed to the Company to go to your work,' and Jones says, 'Yes, ask them that.' Not a man stirred, or separated himself from the rest. I asked all those who were well disposed to separate from the rest. I said both to Jones and Wilson, 'Am I to understand that you refuse to go on with your work until Dilley is reinstated?' They (that is Jones and Wilson) said 'yes.' Now you must consider what had happened, and what Wilson said on the 29th. They said that Dilley's discharge and the Fulham matter had been put into one. Does that mean that they were to strike, unless the Fulham matter and Dilley's matter were both settled? And if it does mean that, who had put them into one? Was it the persons at these works only that had put them into one? The persons at these works, unless they were combined with others, had no interest in the Fulham works. Had they any combined action with others with regard to the Fulham works, and if so, where was that combination? You know that they sent a delegate to the society; you don't know whether there was a delegate from the Fulham works, but you must ask yourselves what was the meaning of Dilley's discharge and the Fulham matter being put into one. Mr. Trewby goes on:— 'I said, 'I have nothing to do with the affair at Fulham.' These things were said loud enough for the other workmen to hear. They all stood together but the other workmen said nothing; I told them I would give them ten minutes for consideration; I said that loud enough for them to hear. I went away into the stoker's lobby. I saw a man named Simmons in the

lobby and in consequence of what Simmons said to me I asked, when I got back, for Bunn and Ray, who are two of the defendants.' You have heard of Wilson, Jones and Dilley, now you heard Bunn, Ray and Webb. You must exercise of course, to some degree your imagination, so as to get at the truth of what was taking place. Bunn and Ray are there according to their evidence, and they stand forward. Mr. Trewby proceeds: 'I said to them, 'Am I to understand that you refuse to go on with your work till Dilley is reinstated?' They said, 'Yes.' I said, 'You know that you are acting illegally, that you can't leave your work without notice, that some of you are under a monthly agreement and some under a weekly agreement and you must not leave your work without giving us proper notice. I will give you ten minutes more for consideration, and then you will let me know the result.' Jones said, 'Well we may as well tell you at once, we have made up our minds.' I said, 'I will let you have ten minutes for reflection.' I then went away, and in about ten minutes I returned and Jones again said, 'We are of the same opinion.' Jones, Bunn, Ray and Webb were there then; I won't be sure about Wilson being there then. The gangs were still there, not so many as there had been. Jones said, 'they were still of the same opinion.' I said, 'very well; then I will reinstate Dilley, but I reinstate him under protest; now go on with your work.' Webb said, 'that they did not know what I meant by protest.' I said, 'Do you?' and he said 'Yes.' I said, 'Perhaps you will explain it to them.' He said to the men (that is, to the body of men,) 'the Governor means to punish you.' He said to me, 'Will you withdraw that word?' I said, 'How can I? you insist upon Dilley being rein-

stated, and I reinstate him under protest.' I said to the men (that is, to the body of men,) 'now go on with your work.' Webb said, answering for the men, 'We may as well tell you that we cannot go on with our work until the men at Fulham are let in.' They go away again, you see from Dilley's case, and now it is that they cannot go on with their work until the men at Fulham who are out, the sixty-two men, are let in. Mr. Trewby said, 'That is a matter with which I have nothing whatever to do, and I can do no further in it.' They said they could not go to work until they had orders from their delegate meeting. I have pointed out to you what took place at the beginning. Wilson went to the delegates' meeting, and the order was, 'Don't act at once; only act when you receive orders.' Then all this contest, and then at the end, what is said in the face of these men is that they could not go to work until they received orders from their delegate's meeting. Mr. Trewby further deposes: 'Webb said that, and I left them to consult with my assistants and foreman. The night and day gangs then walked off in a body. I saw Dilley walking away with other men.' Therefore you have here evidence that all these five defendants were present, and there is evidence of their being seen at different parts of the transaction during which they were present with the five hundred. You have now heard what took place. You have heard that the manager is sent for, that he goes, and there are all the men—those who ought to have been away from the works as well as those who ought to have been at work—collected, not prepared for work, but standing there as one body and these defendants one after another acting as spokesmen between them. You have it that these two terms were insisted upon, namely, that Dilley should be reinstated, and that the

Fulham men should be reinstated also, otherwise they would not go to work; and then it is said, 'We cannot go to work until we have received orders from the delegate meeting;' and then upon the manager (who had agreed to reinstate Dilley, although under protest,) refusing to take any responsibility with regard to the Fulham matter because he could not, all the men go off in a body leaving the works there without men to work them. *There was no violence of demeanor, nor threatening of any sort* by any of the men; that is to say, you are to take it that no threats of any personal violence were made, either with regard to Mr. Trewby, or with regard to the other workmen, except that which was hinted, but which was practically given up, and which, I think, therefore, you ought not to take into account, namely, the threat to the Germans. You may take it substantially that whatever was done by these men was not done by threats or personal violence, either to the employers or to each other. The evidence of what was done is before you. It is for you to say whether this evidence proves to you that there was an agreement amongst these defendants, and practically amongst all the others, because, whether they were more or less willing is unimportant, if they succumbed and did agree in the combination that unless their demands with regard to Dilley, and also perhaps in regard to the Fulham men, were complied with they would cease work. You have to say whether in your judgment that was not an agreement, not merely to cease work, but to cease work simultaneously and without notice, because as to this what the manager said is most important. He said, 'You have no right to leave your work without giving us proper notice.' Well, according to those contracts, they had not.

What would have been the result if they had given notice? Why, obviously that the company would have had an opportunity to get workmen somewhere else. But if they went away without giving notice, and simultaneously, what would be the consequence to the company? You must ask yourselves whether, in all human probability, it would not have been that the company would have been left without workmen at all, and unable therefore to supply more than the quantity of gas which they had in store, and you have heard that they had not storage for more than a third of what they make in the day. That would seem to show that they could not rely on their storage for the supply of more than a single day. You then have the evidence of three or four men who were employed, Roffey and others, who tell you that they arrived at these gas works in the morning at their usual time, about six o'clock. Roffey says, 'I saw all the defendants there when I arrived. Dilley told me if I did not go with the rest I should be spotted.' That is going further than anybody else has done; it is not merely an agreement to stop work, but it certainly is a kind of threat and annoyance—and a terrible annoyance—to this man from Dilley. There is, as far as I can see, no evidence that the others combined in that threat, but it is a lamentable thing that Dilley should threaten a man with that which for a workman is as great a crime as he could very well commit—a moral crime as against a fellow workman to say to him, 'Mind! you shan't follow your own will, if you do you shall be spotted;' that is to say, you shall be sneered at and be considered degraded by all the men of your own position and by your fellow workmen. Gentlemen, you must not allow that to weigh against the other defendants

in this case, because there does not seem to be any evidence against them of a conspiracy to be carried out in that manner. Penn says, 'I saw Dilley when I went; I stripped for work; Dilley asked where I was going; I said to work. He told me to put my clothes on, or I must put up with the consequence of it.' But again, this is only Dilley. Byes said, 'I went and saw Bunn there and he asked me where I was going; I told him I was going to work; he said, 'There is no work to-day, the work is stopped.' Now you know the work was not stopped by the employers. The work was stopped, if by anybody, by the agreement of these men among themselves. 'I asked him what for? and he told me to go to the Castle Tavern, in the Barking-road, and I should know.' This introduces a subsequent feature, which can only be of importance in order to lead your minds to this; was there a combination or agreement? We have here Bunn, and I think we have also Dilley, telling the man to go to the Barking-road. But that is not of so much importance as this. You will find that all the men did go to the Barking-road, and to a tavern called the Castle Tavern. So you have not only the fact of all the men leaving simultaneously, but you have also the fact of their all going to the same place, their rendezvous. 'I saw Jones and Ray there. I said to Jones, 'what is the matter?' He told me it was all through Dilley and the men at Fulham; he told me that Collier had asked him to call the men together to ask them if they would go to work and the men said no.' Then you have the German witnesses. About them I do not propose to trouble you, as I do not think under the circumstances they carry the case further. They are to the same effect, that they were told not to work. Now, gentlemen, it

comes to my mind to be an essential matter for you to consider what was the position of the Gas Company, and for that purpose you must consider what was the relation between the Gas Company and the public. As between the Gas Company and the public, the Gas Company were supplying the whole city of London, and a great part of what is called the west end of London, with gas. And the Gas Company would be under contract no doubt to supply a great many persons with gas. But, whether they were under contract or not, you will ask yourselves whether the stoppage of such a large business, and the stoppage of it in that way—namely, that it would reduce the city of London and the suburbs to darkness—whether that would not be a tremendous blow to the company, the employers of these men. I say nothing of the public; but is it not a case in which the men, however little intelligent they might be, would have it in their minds that their employers never would run the risk and take the responsibility of putting the whole of London, or all that part of London which they supplied with gas, into darkness? Then what was the intent in their minds? Was it a wicked intent—that is to say in your judgment was it anything like fair dealing as between master and servant, and between man and man, that the men should agree simultaneously to stop work, and such a work, if they had the intent or the suspicion that by so doing they would put their masters under terrible responsibility? I must ask you whether, in your judgment, this must not have been in their minds: ‘If we let our employers know or think we shall go off simultaneously we shall frighten them so with regard to the mode of carrying on their business, that they must alter their mode of doing their business, and therefore they must succumb to

our wishes, namely, they must take into their employment the man they have dismissed, and whom they dismissed because it is admitted he refused to do what he was told to do, not upon the ground that it was not within his contract to do it, but upon the ground that somebody not his master had told him he was not to do such work. Is that in your judgment an improper interference with the mode of carrying on the business of the employers? And do you think, from the mode in which it was done, that it was in the minds of the men that it would be interfering with their master's will? Do you think that interference was made under such circumstances as would control the will of the masters of ordinary nerve under such circumstances? It is to obtain your view of this that I ask you, with regard to this first set of counts. Do you think that a conspiracy is made out against these men; first, that they tried to force the company to conduct their business contrary to the will of the company by improper threat or improper molestation? Do you think that the defendants agreed together to force the company to conduct their business contrary to their own will—that is, to force the company to employ a man against their will, which man the company, unless so forced, would not employ? Then, do you think that was done by an improper threat or molestation? And in order to arrive at this, *I tell you there would be an improper molestation if anything was done with an improper intent which you think was an unjustifiable annoyance and interference with the masters in the conduct of their business, and which in any business would be such annoyance and interference as would be likely to have a deterring effect upon masters of ordinary nerve.* Therefore, do you think that the defendants agreed to force their masters to

carry on their business in a manner against their will by improper molestation—that is to say, by annoyance or interference which in your minds was so unfair as to be unjustifiable, and which would in your judgments deter masters of ordinary nerve from carrying on their business as they desire, such molestation being of this kind: ‘Inasmuch as we know you are a gas company lighting a great part of the metropolis, we suggest to you this—Suppose we all leave work at the same moment; if we do, you cannot carry on your business; you must then throw every district into darkness. You dare not do that against your customers and against the public, and therefore you must yield to what we demand.’ Was that an improper interference, in your judgment, and was it such an interference as in your judgment would be likely to deter masters of ordinary nerve from carrying on their business according to their own will? If you think that you must say that these defendants are guilty of the conspiracy. If you think that it is not made out in any one of the circumstances which I have put to you, you must say that the defendants are not guilty. Of course you are at liberty to draw any distinction between these defendants that you may think fit; but it was practically an agreement amongst all the workmen. As it seems to me, there is no distinction between any of the defendants, but the evidence is as nearly as possible equal to them all; and your verdict will be, I think, that they are all guilty or none. Then comes the other point.—Do you think that they agreed to interfere to hinder and prevent the company from carrying on and exercising their business according to their own will by those other means, namely, by simultaneously breaking all the contracts of service into which they had entered? It has been said that

the breaking of the contracts would not be an offense, because they would not be within the Masters and Servants Act. Now, according to that Act, the word 'employed' shall include any servant or workman who has entered into a contract of service with an employer. It is obvious that these men had all entered into a contract of service with their employers; but not only these men, for the evidence is that all the five hundred men had contracts of service with their employers. Then the Act goes on to say that the words, 'Contract of service,' shall include any contract whether in writing or by parol. Now, to say that these workmen had not entered into a contract by parol seems to me to be absurd. Some of them sign these agreements that have been put in, and others go to the works and are paid weekly wages, but with a notice put up in their pay-room that they are not to leave, and that they are bound not to leave without a week's notice. This is a contract of service and it signifies not whether it was in writing or not. Then, having entered into these contracts, the Act says, 'Whenever the employed shall neglect or refuse to fulfil his contract, he may be summoned before a magistrate and dealt with summarily.' Therefore, the breach of such contract so made is an offense, and the breach of that contract, I tell you, is an unlawful act. Now the breach suggested is this. They were all entitled to leave the service with notice, but none of them were entitled to leave without notice, and I have pointed out the importance of that in this particular case. If they leave with notice, their places can be supplied; if they leave without notice, that is to say, simultaneously—the five hundred men—their places cannot be supplied. If you think, therefore, that they had entered into an agreement not merely

to break their contracts, but to break them simultaneously, do you or do you not think, even if they might break their contracts and cease to work, and even if they might agree to do it—do you or do you not think that was the doing or agreeing to do a lawful act, that is, to leave the employment? Even if you assume it to be a lawful act, do you think this was an agreement to do that lawful act by unlawful means, that is to say, by breaking their contracts—by leaving without notice at one and the same time? And in order to show the spirit and purpose with which they did it, do you think that they did it with evil intent, that is, the evil intent of forcing their masters to carry on their business in a way which they knew was contrary to the will of their masters? If they did, you will say they are guilty of a conspiracy; if you think they did not, you will say that they are not guilty. Therefore, if you find them guilty of one of these conspiracies, you must say that they are guilty, and perhaps you will tell me of which. It does not at all follow that you may not be of opinion that they are guilty of both conspiracies, and if so you will tell me. As to any trouble, or annoyance, or anger, which they may have caused to the public you must not take that into account. I mean you must not find them guilty because you think them wicked in that respect. Still, you must take this into account: What had they in their minds with regard to their masters? If you think they are guilty of these conspiracies with regard to their masters you will say so; but if, upon consideration, you doubt it, with regard to all or any of the defendants, you will, of course, give them the benefit of that doubt, and say that they are not guilty. Gentlemen, you will try the case without prejudice, and without any view

of what the result may be ; and you will say whether, within the law as I have laid it down to you, they are guilty of one or both the conspiracies. If you think they are, you will say that they are guilty; if you think they are not, of one or either, you will say that they are not guilty."

Verdict of guilty, and sentenced to twelve months imprisonment with hard labor.¹

§ 8. The Right to Strike.

From the definitions given, all strikes are illegal. The wit of man could not devise a legal one. Because compulsion is the leading idea of a strike. Men seek to compel by force of numbers, employers or employes to do that which they well know could not be done by single individuals. It is apparent to any sane mind that there is something in the mere assembling together in large numbers, that inspires if not actual fear, at least solicitude or apprehension in the mind of the bravest man, and in the timid actual fear and indescribable dread. The purpose invariably is to produce this very result. It is intended to have an effect on the mind, and when the mind is affected as the strikers desire, extort some concession that they know they could not otherwise obtain. It is idle to talk about strikers being actuated by inoffensive purposes in organizing a strike. They know and fully intend all the evil consequences that result from simultaneously and by preconcert quitting the service of their masters. They know and fully intend that by quitting in a body in the midst of the busiest time, that their masters will be left without sufficient employes to carry on business, and they hope that

¹See also *Reg. v. Duffield*. 5 Cox C. C. 404, on the subject of intimidation, obstruction and interference.

the certainty of financial loss resulting from their action, will compel the employers to yield to their demands. Their purpose is to compel the employer, by putting him in mental duress, to agree to something that he would not agree to if left free to exercise his right of volition. In any other of the affairs of life, a contract so obtained, would be promptly declared by the courts, illegal. A contract must be the free, voluntary and unbiased agreement of the parties entering into it. The contract between employer and employe is, that the former will supply work and pay certain prices, and that the latter will do work for the the prices agreed upon. The price to be paid, the kind of labor to be performed, and the rules and regulations under which it is to be performed, are legitimate subjects of contract when the parties are entering into one. Hence, as some authorities put it, that workmen unemployed and free to enter into service or not have the right to say they will work for only certain prices, and that if they are not paid those prices they will not work at all.¹ The qualifications in this proposition must not be lost sight of, "workmen unemployed and free to enter into service or not." When the parties are making their contract in the first instance, they are both as free to make just such a one as suits them, as parties making contracts in any other of the affairs of life—between vendor and vendee for instance. The owner of property or goods has the right to ask just such price as he desires, or as he thinks he can get, and the purchaser must pay his price or go without the goods. But he has the right to buy as cheap as he can, and to argue with the owner to induce him to lessen the price.

¹ Reg. v. Duffield, 5 Cox, C. C., 404; Reg. v. Selby, Id., 495; Commonwealth v. Hunt, 4 Metc., 111,

But if the owner is obdurate, the purchaser must pay the price or go without. It is evident that the vendor has the advantage, and if he desires to be mean he can do so. But it so happens that there are other vendors and other dealers who may be actuated by better motives, and willing to sell goods at reasonable prices. The purchaser therefore, can turn on his heel and say, "very well I will go where I can buy cheaper." Hence each dealer is a check on all others and competition being great all are compelled, if they do any business, to sell for reasonable prices. Hence prices substantially obtain uniformity. That uniformity of price is what both dealer and the community generally recognize as being fair. The purchaser recognizes the fact that the dealer must make a profit or go out of business. The dealer recognizes the fact that he must put the price of his goods at a figure that is within the means of his customers. It is evident that if the dealer demanded outrageously high prices, his goods, owing to the inability of his customers to buy them, would rot on his hands and he would suffer a total loss. Further, every merchant has high and low priced goods. This must be so of necessity. Some goods cost more and therefore are worth and must sell for more. But none but those who are able to, can or should purchase them. It is purely a voluntary matter whether any one buys them. But even the high priced goods must be within the means of purchasers to buy. Precisely the same principles apply between master and servant. There are different grades of workmen the same as there are different grades of goods. They range from the common laborer up to the most skilled mechanic. The law has adopted the honorable rule, by treating the labor of the man who has nothing but his muscle

to rely upon, and the skill of the better class of workmen, as property. Therefore, when a workman applies for employment he, in law, offers to exchange property with the employer. Like any other property owner, he has the right either as an individual, or many of them collectively, to fix his own price upon his own property. Yet, while he has the right to do that, he must recognize the right of the employer to have something to say as to whether he will buy his property at all or if he does, what price he will pay. As in other cases, mutual concessions in agreeing to terms are the result. Undoubtedly the employer has the advantage, because he has the most means, and can get along without employes for a longer time than the latter can without employment. But that is simply the good fortune of the one party and the hard luck of the other, and is not the fault of the law. Before contracts are entered into, the workmen have the right to negotiate with employers, argue with them and induce them to pay as high wages as possible. But in these negotiations principles of justice must not be lost sight of. Thus, like the merchant who would demand prices that no one could afford to pay, if the workmen demanded wages higher than the employers could afford to pay, there could be no employment, for like the merchant, the employer must make a profit or go out of business. If the employer would not pay wages sufficient to enable his employes to live, then, in that case, there could be no employment. But while the law certainly does concede to workmen the right to receive as high wages as possible, yet it will not permit them to extort, by threats, intimidation, coercion, interference or molestation, a contract from the master to pay those prices. Since the repeal of the odious labor laws of England, masters cannot force workmen to

labor if they do not wish to; and certainly it would be equally as unjust to compel a master to employ workmen whom he does not wish to employ. A workman, having accepted employment, is bound by his contract, whatever it may be, provided it is a lawful contract—not based on any illegal or immoral consideration. If he agrees to work for a specified time at a specified rate he has no legal right to quit before the expiration of his term of service. The law holds the employer to his side of the contract, and it certainly holds the employe to his. It knows no pets. It will not hold one party to his contract, and allow the other to violate his with impunity. If the rule were otherwise there would be no use in making contracts. But where men are not employed for any specified time, unless there is a local custom so well established that all persons are supposed to contract with reference to it, a workman has the right to quit when he pleases, for any reason or no reason except that he wishes to.¹

It being manifest that the purpose of employes in quitting work simultaneously was to compel the master to do something against his will, it is not astonishing that the common law treated the mere conspiracy or combination to quit as a criminal conspiracy. In criminal offenses, the law looks only at the intent with which an act is done. The intent in striking being wrongful, it must be admitted that the common law rule was not much out of the way, for an offense was committed as soon as an intent was formed, and that intent was shown as soon as a conspiracy was entered into.

By some of the authorities cited in the preceding section, the common law of conspiracy, so far as it

¹ Frank v. Denver & R. G. Ry. Co. 23 Fed. Rep. 757.

relates to strikes, was repealed by the act of 6 Geo. 4, c. 129, § 3. But the case of *Reg. v. Bunn*, last cited in the preceding section, seems to hold that it was not done away with, but is still in force. At any rate, that statute, as modified by 34 and 35 Vict., c. 72, is the criminal law now in force in England, on the subject of strikes. It shows the purposes and methods of strikers as demonstrated by past experience, and, in brief, makes it unlawful for any person, by violence to person or property, or by threats, intimidation, molestation, or obstruction, to

1st, Force or endeavor to force a workman to quit his employment ;

2d, Prevent or endeavor to prevent persons seeking employment from being employed ;

3d, Force such person to belong to a club, contribute money, or pay a fine or penalty on account of being a member of a club or association ;

4th, Force or endeavor to force a manufacturer or person carrying on any trade or business to alter the mode of conducting or carrying on his business, to limit the number of his apprentices, or the number or description of his journeymen, workmen or servants.

From this statute the offenses of strikers are directed both against employers and employes, for the purpose of compelling them to do something against their will.

It will be found in the light of the cases given in the preceding section, that the unlawful acts are to be accomplished by intimidation. Intimidation shades off from the highest to the lowest form. There could not be a higher form of intimidation than violence. Threats are always intended to intimidate. Intimidation is held to be something unpleasant to the mind, and hence is intended to have a direct influence upon

the mind. As molestation and obstruction are also intended to compel persons to do something against their will, and as no one will do anything contrary to his will except through fear of something, either personal violence, or consequences, such as loss of business or destruction of property, it is fair to assume that the words in the statute, 'molestation' and 'obstruction' convey the idea of intimidation, although in a milder form than that caused by violence or threats.

Therefore, from the above statutes and cases the following general rule may be formulated. Workmen not bound by contract to work for a specified time, or those so bound but at the expiration of their term of service, may quit work either singly or in a body by preconcerted arrangement, provided they do not resort to any of the forms of intimidation forbidden by the statute. But the moment such intimidation is resorted to, that moment their acts become unlawful, and they are liable to punishment for criminal conspiracy.

The same remarks by the courts in American cases, such as "workmen have the right to quit work when they please," "they have the right to work for whom they please, &c., &c.," occur. But they will be found in nearly every instance to be obiters. The defendants were indicted and tried for conducting strikes by every form of intimidation known to the law of strikes. In this country things are not done in a half-hearted way. Our strikes, particularly those that are considered worth taking into court, are marked by not only violence, but too frequently by loss of life and property. But obiters have a value, for they show the drift of the judicial mind, and indicate what the decisions will be when certain questions get fairly before the courts.

The American rule, if it really can be said there is any generally applicable to all the states, is that laid down in a case in Pennsylvania.¹ Judge Gibson in deciding the case said, "I take it, then, a combination is criminal wherever the act to be done has a necessary tendency to prejudice the public or to oppress individuals by unjustly subjecting them to the power of the confederates, and giving effect to the purposes of the latter, whether of extortion or mischief."

The American cases are as inimical to intimidation in any form as the English. But as they will appear under other heads further mention of them here will not be made.

Statutory enactments against intimidation. In many of the states there are statutes prohibiting the intimidation of both employees and employers.

In *Alabama*, it is made punishable by imprisonment in the county jail, or by hard labor for the county for not exceeding twelve months, for any person by force, threats of violence to person or property to prevent or seek to prevent another from working, furnishing materials, contracting to do work or furnish materials, or to engage in any lawful business, industry or calling, or to disturb or interfere with or prevent the peaceable exercise of any such business, &c.²

In *Connecticut*, it is enacted that every person who shall threaten, or use any means of intimidation to compel a person against his will, to do or abstain

¹ *Commonwealth v. Carlisle*, Brightly's Rep. (Pa.) 36. Carson, Criminal Conspiracies, in Wright's Criminal Conspiracies and Agreements, 178. Greenhood, Pub. Policy, 648, Rule 546. Ray, Contractual Limitations, 340. *Toledo A. A. and N. W. Ry. Co. v. Pa. Co. et al*, 54 Fed. Rep., 730.

² Code Ala., (1886) 2 vol., § 3763.

from doing an act which he has the legal right to do, or who shall persistently follow a person in a disorderly manner, or injure or threaten to injure his property with intent to intimidate him, shall be fined not more than one hundred dollars or imprisoned not more than six months.¹

In *Colorado*, it is not unlawful for two or more persons to combine to advance their interests as workmen, to increase their wages, to regulate the hours of labor, and to procure fair and just treatment of employes, *provided* they do not resort to threats of bodily or financial injury, or by any display of force prevent or intimidate any other person from continuing in employment, or to boycott or intimidate any employer of labor.²

In *Georgia*, if any person, by threats, violence, intimidation or other unlawful means, shall prevent or attempt to prevent any person from engaging in, remaining in, or performing the duties of any lawful employment or occupation; or if they singly or in combination conspire to prevent or attempt to prevent any person by threats, violence or intimidation, from engaging in, remaining in or performing the business, labor or duties of any lawful occupation or employment; or if they singly or in combination conspire to hinder any person who desires to labor from doing so, or hinder any person by threats, violence or intimidation from being employed, or by such means hinder the owner, manager or proprietor for the time being from controlling, using, operating or working any property in any lawful occupation, or shall by such means hinder such persons from hiring or employing

¹ General Statutes Conn., (1888) § 1518, chap. 99.

² Acts of Col., 1889, p. 92, § 1.

laborers or employes, all such persons shall be guilty of a misdemeanor, &c.¹

In *Illinois*, it is enacted that if persons shall combine for the purpose of depriving the owner or possessor of property of its lawful use and management, or preventing by threats, *suggestions* of danger, or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon, the persons so offending shall be fined not exceeding \$500, or be confined in the county jail not exceeding six months.

2. Or if any person shall by threat, intimidation, or unlawful interference, seek to prevent any other person from working or obtaining work at any lawful business on any terms he may see fit, such person shall be fined not exceeding \$200.

3. Whoever enters a coal bank, mine, shaft, manufactory, building or premises of another with intent to commit any injury thereto, or by means of threats, intimidation, or riotous or other unlawful doings to cause any person employed therein to leave his employment, shall be fined not exceeding \$500, or confined in the county jail not exceeding six months, or both.²

In *Indiana*, any one preventing another by threats, intimidation or force from working or furnishing materials to any person, firm or corporation engaged in any lawful business, shall be fined not more than one hundred dollars, nor less than twenty, to which may be added imprisonment in the county jail not more than six months nor less than ten days.

¹ Acts of Ga., 1887, No. 347, p. 107, § 1.

² Annotated Statutes, Ill., 1885, chap. 38, pars. 206, 207, 208.

2. Any one who by threats, intimidation, or force, prevents or attempts to prevent any railroad company, or any of the agents, servants, or employes thereof from moving, running and operating the locomotives, cars and trains thereof, or from transporting and carrying passengers or freight in its cars, or in like manner prevents or attempts to prevent any express company, common carrier, or persons engaged in transporting or carrying passengers or freight for hire from doing so, shall be fined not more than one thousand dollars, nor less than fifty dollars, to which may be added imprisonment in the State prison not more than twenty-one years nor less than two years, and be disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.¹

In *Louisiana*, any person or persons, who may by violence or threats or in any manner intimidate and prevent another from shipping upon any steamboat within the state, or who shall in such manner interfere with or prevent any person who is one of the crew of a steamboat from discharging his or her duty, or unlawfully interfere with any laborer who may be taking on board or discharging cargo from a steamboat, shall be deemed guilty of a misdemeanor, and upon conviction before any justice of the peace of the state or Recorder of the city of New Orleans, shall be fined not less than twenty-one dollars and costs of prosecution, and imprisoned not less than twenty days in the parish jail.²

In *Maine*, it is enacted that whoever by threats, intimidation or force, alone or in combination with others, prevents any person from entering into or continuing in the employment of any person, firm or

¹ Revised Statutes, 1881, Ind., chap. 5, §§ 2126, 2127.

² Voorhies Revised Laws, La., 2d Ed. 160, § 944.

corporation, shall be punished by imprisonment not more than two years, or by fine not exceeding five hundred dollars.¹

In *Maryland*, a combination to do or procure an act to be done in contemplation or furtherance of a trade dispute between employers and workmen is not indictable as a conspiracy, if the act committed by one person would not be punishable as an offense.²

This statute repeals the common law, which makes it a conspiracy for many to do simultaneously what would be lawful for one person to do.

In *Massachusetts*, whoever by intimidation or force prevents or seeks to prevent a person from entering into or continuing in the employment of a person or corporation shall be fined not more than one hundred dollars.³

In *Michigan*, if any person or persons shall, by threats, intimidation, or otherwise, and without authority of law, interfere with, or in any way molest, or attempt to interfere with, or in any way molest or disturb, without such authority, any mechanic or other laborer, in the quiet and peaceable pursuit of his lawful avocation, such person or persons shall be deemed guilty of a misdemeanor, and on conviction by a court of competent jurisdiction, shall be severely punished by a fine of not less than ten dollars, nor more than one hundred dollars, or by imprisonment in the county jail where the offense shall have been committed, not less than one month nor more than one year, or by both fine and imprisonment, in the discretion of the court; but if such pun-

¹ Acts of Maine, 1889, chap. 303.

² Md. Code Pub. Gen'l Laws, 1888, Article 27, § 31.

³ Mass. Public Statutes, 1882, chap. 74, § 2.

ishment be by fine, the offender shall be imprisoned in such jail until the same be paid, not exceeding ninety days.

2. If any person or persons shall willfully and maliciously by any act, or by means of intimidation, impede or obstruct, except by due process of law, the regular operation and conduct of the business of any railroad company or other corporation, firm or individual in this State, or of the regular running of any locomotive engine, freight or passenger train of any such company, or the labor and business of any such corporation, firm or individual, he or they shall, on conviction thereof, be punished by imprisonment in the county jail not more than three months, or in the State prison for a period not exceeding one year.

3. If two or more persons shall willfully and maliciously combine, or conspire together to obstruct or impede, by any act or by means of intimidation, the regular operation and conduct of the business of any railroad company or any other corporation, firm or individual in this state, or to impede, hinder, or obstruct, except by due process of law, the regular running of any locomotive engine, freight or passenger train, on any railroad, or the labor and business of any such corporation, firm or individual, such person shall, on conviction thereof, be punished by imprisonment in the county jail for a period not more than three months or in the State prison for a period not exceeding two years.

4. This act shall not be construed to apply to cases of persons voluntarily quitting the employment of any railroad company or such other corporation, firm, or individual, whether by concert of action or otherwise.¹

¹ Howell's Annotated Statutes, Michigan, ed. of 1883, chapter 321, §§ 9273, 9274, 9275, 9276.

In *Missouri*, every person who shall, by force, menace or threats of violence to the person or property of another, compel or attempt to compel any person to abandon any lawful occupation or employment for any length of time, or prevent or attempt to prevent any person from accepting or entering upon any lawful employment, shall, upon conviction, be punished by imprisonment in the county jail not less than six months, or by fine of not less than one hundred dollars, or by both such fine and imprisonment. Every person who shall, by threats of violence to the person or property of another, compel or attempt to compel any person to abandon any lawful occupation or employment for any length of time, or prevent any person from accepting or entering upon any lawful employment, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine not less than fifty dollars, or imprisonment in the county jail not less than three months, or by both such fine and imprisonment.¹

In *Montana*, every person who by force, or fraud, or by threats, or intimidation, either by words, or writing, or actions, or exhibition of force, shall prevent or interfere with, or hinder or delay any contractor, mechanic, laborer, workman or employe in the performance of any lawful contract, work, labor or employment for any person or company, or upon any terms, or at any price or wages to which such contractor, mechanic, laborer, workman or employe may have agreed, or for which he may desire to work, or labor, or contract, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifty nor more than one hun-

¹ Revised Statutes, Mo., 1889, chap. 47, Art. 7, § 3783.

dred dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment.

2. Every person who, by force or fraud, or by threats of injury to person or property, or intimidation, either by words, or writing, or actions, or exhibition of force, or otherwise, and without authority of law, shall prevent or interfere with, or hinder or delay any person, company or corporation in the lawful use, or working, or enjoyment, or control of any mining claim, mill, works, machinery, or other property, or in the lawful management, direction and control of any workman or employe of such person, company or corporation, or in the working or performance by such person, company or corporation of any lawful contract or agreement for hiring, or work, or labor, or other services, shall be guilty of a misdemeanor and on conviction shall be punished as prescribed in section 252.

3. Every person who shall knowingly aid, abet, assist, advise or encourage any other person or persons to commit any of the offenses mentioned in sections 252 and 253, and every person who, knowing any such offenses to have been committed, shall assist or aid the offender in escaping arrest or trial, shall be guilty of a misdemeanor, and on conviction shall be punished as provided in section 252.¹

In *New Hampshire*, any person who interferes in any way whatever to injure or damage any other person or persons in their person or property while engaged in their lawful business, trade, or occupation, or on the way to or from such business, trade or occupation, or endeavors to prevent persons from engaging in their lawful business, trade or calling,

¹ Compiled Statutes, Montana, 1887, chap. 13, §§ 252, 253, 254.

shall be subject to a fine of not more than five hundred dollars, or imprisonment not exceeding one year.¹

In *New York*, if two or more persons conspire, either, * * * . * * * * *

(5) To prevent another from exercising a lawful trade or calling, or doing any lawful act, by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements or property belonging to or used by another, or with the use or employment thereof; or

(6) To commit any act injurious to the public health, to public morals or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws; each of them is guilty of a misdemeanor.²

2. That the orderly and peaceable assembling or co-operation of persons employed in any calling, trade, or handicraft, for the purpose of obtaining an advance in the rate of wages or compensation, or of maintaining such rate is not a conspiracy.³

3. Any person or persons, employer or employers of labor, and any person or persons of any corporation or corporations on behalf of such corporation or corporations, who shall hereafter coerce or compel any person or persons, employe or employes, laborer or mechanic, to enter into an agreement, either written or verbal, from such person, persons, employe, laborer, mechanic, not to join or become a member of any labor organization, as a condition of such person or persons securing employment, or continuing in the employment of any such person or persons, employer or employers, corporation or corporations shall be deemed guilty of a misdemeanor. The penalty for

¹ Acts New Hampshire, 1887, chap. 54, § 1.

² Revised Statutes, N. Y. Penal Code 34, § 168.

³ Id. § 170.

such misdemeanor shall be imprisonment in a penal institution for not more than six months or by a fine of not more than two hundred dollars, or by both such fine and imprisonment.¹

4. A person, who with a view to compel another person to do or abstain from doing an act which such person has a legal right to do or abstain from doing, wrongfully and unlawfully * * * deprives any such person of any tool, implement, or clothing, or hinders him in the use thereof; or uses or attempts the intimidation of such person by threats or force is guilty of a misdemeanor.²

5. A person who willfully and maliciously, either alone or in combination with others, breaks a contract of service or hiring, knowing or having reasonable cause to believe that the probable consequence of his so doing will be to endanger human life, or to cause grievous bodily injury, or to expose valuable property to destruction or serious injury, is guilty of a misdemeanor.³

6. But nothing in the code is to be so construed as to prevent any person from demanding an increase of wages, or from assembling and using all lawful means to induce employers to pay such wages to all persons employed by them, as shall be a just and fair compensation for services rendered.⁴

In *North Dakota*, every person who by any use of force, threats, or intimidation, prevents or endeavors to prevent, any hired foreman, journeyman, apprentice, workman, laborer, servant, or other person employed by another, from continuing or performing his work, or from accepting any new work or employment, or

¹ Revised Statutes N. Y. Penal Code, 1883, § 170 *a*.

² Id. 141, § 653.

³ Revised Statutes N. Y. Penal Code, 146, § 673.

⁴ Id. § 675.

to induce such hired person to relinquish his work or employment, or to return any work he has in hand before it is finished, is guilty of a misdemeanor.

2. Every person who, by any use of force, threats, or intimidation, prevents or endeavors to prevent another from employing any person, or to compel another to employ any person, to force or induce another to alter his mode of carrying on business, or to limit or increase the number of his hired foremen, journeymen, apprentices, workmen, laborers, servants, or other persons employed by him, or their rate of wages, or time of service is guilty of a misdemeanor.¹

In *Oregon*, if any person shall, by any use of force, threats, or intimidation, prevent or endeavor to prevent any person employed by another from continuing or performing his work, or from accepting any new work or employment, or if any person shall by the use of like means, prevent or endeavor to prevent another from employing any person, or to compel another to employ any person, or to force or induce another to alter his mode of carrying on business, or to limit or increase the number of persons employed by him, or their rate of wages or term of service, such person upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than six months, or by fine not less than twenty, nor more than three hundred dollars.²

In *Pennsylvania*, it shall be lawful for any laborer or laborers, workingman or workingmen, journeyman or journeymen, acting either as individuals or as the members of any club, society or association, to refuse to work or labor for any persons, whenever in his, her or

¹ Penal Code North Dakota, Chap. 57, §§ 733, 734.

² Hill's Annotated Laws, Oregon, 1887, Criminal Code, Title II, § 1893.

their opinion, the wages paid are insufficient, or the treatment of such laborer or laborers, workingman or workingmen, journeyman or journeymen, by his, her or their employer is brutal or offensive, or the continued labor of such laborer, &c., would be contrary to the rules, regulations or by-laws of any club, society or organization to which he, she or they might belong, without subjecting any person or persons so refusing to work or labor, to prosecution or indictment for conspiracy, under the criminal laws of the commonwealth:

Provided, That nothing herein contained shall prevent the prosecution and punishment, under existing law, of any person or persons, who shall, in any way, hinder persons who desire to labor for their employers from so doing, or other persons from being employed as laborers.

2. That the proviso in section 2 shall be so construed that the use of lawful or peaceful means, having for their object a lawful purpose, shall not be regarded as "in any way hindering" persons who desire to labor; and that the use of force, threat or menace of harm to persons or property, shall alone be regarded as in any way hindering persons who desire to labor for their employers from so doing, or other persons from being employed as laborers.¹

In *Rhode Island*, every person who, by himself or in concert with other persons, shall attempt by force, violence, threats, or intimidation of any kind to prevent, or who shall prevent any other person from entering upon and pursuing any employment, upon such terms and conditions as he may think proper shall be deemed guilty of a misdemeanor and be

¹ Brightly's Purdon's Digest, Pa. 1885, 1172, §§ 2, 3.

fined not exceeding one hundred dollars or be imprisoned not exceeding ninety days.¹

2. Every person who shall willfully and maliciously or mischievously injure or destroy the property of another, or obstruct the use of the property of another, or obstruct another in the prosecution of his lawful business or pursuits, in any manner, the punishment whereof is not specially provided for by statute, shall be fined not exceeding twenty dollars or be imprisoned not exceeding three months.²

In *South Carolina*, any person who shall entice or persuade, by any means whatsoever, any tenant, servant, laborer under contract with another, duly entered into between the parties in the presence of one or more witnesses, whether such contract be verbal or in writing, to violate such contract, or shall employ any laborer, knowing such laborer to be under contract with another, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than twenty-five nor more than one hundred dollars, or be imprisoned in the county jail not less than ten nor more than thirty days.³

In *South Dakota*, every person who, by any use of force, threats, or intimidation, prevents, or endeavors to prevent, any hired foreman, journeyman, apprentice, workman, laborer, servant or other person employed by another, from continuing or performing his work, or from accepting any new work or employment, or to induce such hired person to relinquish his work or employment, or to return any work he has in hand before it is finished, is guilty of a misdemeanor.

¹ Public Statutes R. I., 1882, chapter 241, § 8.

² Public Statutes R. I., 1882, chapter 242, § 40.

³ General Statutes S. C., chapter 100, § 2479.

2. Every person who, by any use of force, threats, or intimidation, prevents or endeavors to prevent another from employing any person, or to compel another to employ any person, or to force or induce another to alter his mode of carrying on business, or to limit or increase the number of his hired foremen, journeymen, apprentices, workmen, laborers, servants or other persons employed by him, or their rate of wages, or time of service, is guilty of a misdemeanor.¹

In *Texas*, an "unlawful assembly" is the meeting of three or more persons, with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right, or to disturb him in the enjoyment thereof.

2. If the purpose of the unlawful assembly be to prevent any person from pursuing any labor, occupation or employment, or to intimidate any person from following his daily avocation, or to interfere in any manner with the labor or employment of another, the punishment shall be by fine not exceeding five hundred dollars.²

3. Any person who shall by threatening words, or by acts of violence or intimidation, prevent or attempt to prevent another from engaging or remaining in or from performing the duties of any lawful employment, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five nor more than five hundred dollars, or by confinement not less than one nor more than six months in the county jail.³

4. Any person or persons who shall, by force, threats, or intimidation of any kind whatever, against

¹ Revised Penal Code, S. Dakota, 1883, chapter 57, §§ 733, 734.

² Revised Penal Code Texas, title 9, §§ 279, 289.

³ Acts 1887, Texas, chapter 18, § 1.

any railroad engineer or engineers, or any conductor, brakeman, or other officer or employe, employed or engaged in running any passenger train, freight train, or construction train running upon any railroad in this state, prevent the moving or running of said passenger, freight, or construction train, shall be deemed guilty of an offense, and upon conviction thereof each and every person so offending shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars, and also imprisoned in the county jail for any period of time not less than three months nor more than twelve months.

5. Every day said train or trains mentioned in section 1 of this act are prevented from moving on their road as specified in section 1 of this act shall be deemed a separate offense, and shall be punished as prescribed in section 1 of this act.¹

In *Vermont*, a person who threatens violence or injury to another person with intent to prevent his employment in a mill, manufactory, shop, quarry, mine or railroad, shall be imprisoned not more than three months or fined not more than one hundred dollars.

2. A person who, by threats or intimidation, or by force, alone or in combination with others, affrights, drives away and prevents another person from accepting, undertaking or prosecuting such employment with intent to prevent the prosecution of work in such mill, shop, manufactory, mine, quarry or railroad, shall be imprisoned in the State prison not more than five years or fined not more than five hundred dollars.²

In *West Virginia*, * * * * *
nor shall any person or persons or combination of persons by force, threats, menace or intimidation of

¹ Acts, 1887, Texas, chap. 92, §§ 1, 2.

² Revised Laws, Vt., 1880, chap. 196, §§ 4226, 4227.

any kind, prevent or attempt to prevent from working in or about any mine, any person or persons who have the lawful right to work in or about the same, and who desire so to work; but this provision shall not be so construed as to prevent any two or more persons from associating themselves together under the name of Knights of Labor, or any other name they may desire, for any lawful purpose, or from using moral suasion or lawful argument to induce any one not to work on or about any mine.¹

In *Wisconsin*, any person who by threats, intimidation, force, or coercion of any kind, shall hinder or prevent any other person from engaging in or continuing in any lawful work or employment, either for himself or as a wage-worker, or who shall attempt to so hinder or prevent, shall be punished by fine not exceeding one hundred dollars or by imprisonment in the county jail not more than six months, or by both fine and imprisonment in the discretion of the court.

2. Any person who shall individually or in association with one or more others, willfully break, injure or remove any part or parts of any railway car or locomotive, or any other portable vehicle or traction engine, or any part or parts of any stationary engine, machine, implement or machinery, for the purpose of destroying such locomotive engines, car, vehicle, implement or machinery, or of preventing the useful operation thereof, or who shall in any other way willfully or maliciously interfere with or prevent the running or operation of any locomotive engine or machinery, shall be punished by fine not exceeding one thousand dollars or by imprisonment in the county jail or the state prison not exceeding two years, or by both fine and imprisonment in the discretion of the court.²

¹ Code of W. Va., 3d Ed., 1891, 997, § 14.

² Acts 1887, Wis., chap. 427, §§ 1, 2.

The foregoing may be said to fairly represent the statutory law of the United States on the subjects of which they treat. The states mentioned, so far as population, wealth, industries of all kinds, great centers of railroad, steamboat and steamship systems, locations for the largest and most important factories, manufactories and mines in the country are concerned, are decidedly the preponderating factors in the statehood of the United States. In them, the greatest and most serious strikes have occurred, and therefore, the legislatures of those states have been compelled to give serious thought to labor commotions. A study of the above statutes shows, that taken as a whole, they closely follow the statute of 6 George 4, c. 129, § 3, and 34 and 35 Vict., c. 72, in their leading features, and also that they follow closely the rulings of the courts, thus showing that there is strong sympathy and perfect harmony between the latter and the people. In other words that the courts have the confidence of the people.

It may, therefore, be laid down as a general rule in the United States, that employes have the right, either singly or in bodies, to quit their employment, provided that they do so peaceably, and, in doing so, do not violate their contracts with their employers. But that if in quitting their employment, they either singly or in combination resort to violence to the person or property of either employer or co-employes or persons seeking employment, or by threats, intimidation in any form, molestation, obstruction or interference, to compel an employer to increase their wages, to alter his mode of carrying on his business, to discharge employes, to employ those he does not wish to employ, or to compel, against their will, employes to quit their employment, or to prevent those seeking

work from accepting employment, to join a club or association they do not wish to join, then their acts are illegal, and they become liable criminally. Violence and intimidation are abhorrent to the law, and the moment they taint the acts and purposes of employes, that moment their acts and purposes become unlawful.

Exception as to railroad employes. Railroad companies being in the nature of public institutions and being engaged in constantly carrying large numbers of persons and vast quantities of freight, it is a matter of public necessity that there should be laws for the protection of both. Therefore, to prevent the loss of human life and the destruction of property, many of the states have statutes making it a penal offense for any locomotive engineer, conductor, brakeman, baggagemaster, or other railroad employe, for the purpose of aiding in a strike or to encourage others to engage in one, to abandon his or their engine, car or train before it reaches its regular destination, or for the purpose of aiding a strike to injure or disable any engine or car so it will not be fit for immediate use, or for any engineer, in aid of a strike against some other road, to refuse or neglect to move or aid in moving the cars of such road over the tracks of the company employing him.¹

¹ See Gen'l Statute Conn. 1888, chap. 99, § 1517; Acts Del. 1877, chap. 481, §§ 1-5; Annotated Statutes Ill. 1885, chap. 114, Pars. 109-112; Compiled Laws of Kansas, 1885, chap. 31, §§ 2213-2216; Revised Statutes Me. 1883, chap. 123, §§ 6-10; Howell's Annotated Statutes Mich. 1883, §§ 9275-9276; Revised Statutes N. J. 1877, p. 946, §§ 173-176; Brightly's Purdon's Digest Pa., 1885, p. 426, §§ 128-131.

CHAPTER III.

STRIKES AS CONSPIRACIES—BOYCOTTS, PICKETING, BLACKLISTING.

- 2/3 9. Boycotts.
- 10. Picketing.
- 11. Liability of publishers of newspapers for encouraging strikes.
- 12. Blacklisting.
- 13. Rights of employes with respect to each other.

§ 9. Boycotts.

A boycott is one of the most serious forms of intimidation resorted to during strikes. It may be and frequently is accompanied by violence to person or property, or it may be a complete social or business ostracism or both, of the parties boycotted. Usually it is directed against the party or parties struck against, but when necessary for the strikers to carry their point, it is directed against persons patronizing them, and sometimes against the entire public. The purpose is to utterly destroy the person or persons against whom the boycott is directed by destroying their business and preventing them from even procuring food to sustain life.

Anderson's Law Dictionary defines boycotting as "a combination between persons to suspend or discontinue dealings or patronage with another person or persons because of refusal to comply with a request of him or them. The purpose is to constrain acquiescence or to force submission on the part of the individual who, by non-compliance with the demand, has

rendered himself obnoxious to the immediate parties, and, perhaps, to their personal and fraternal associates."

Black's Law Dictionary defines it to be "a conspiracy formed and intended directly or indirectly to prevent the carrying on of any lawful business, or to injure the business of any one by wrongfully preventing those who would be customers from buying anything from or employing the representatives of said business, by threats, intimidation, or other forcible means."

In a Pennsylvania case it was said, "The word in itself implies a threat. In popular acceptance it is an organized effort to exclude a person from business relations with others by persuasion, intimidation and other acts which tend to violence, and they coerce him through fear of resulting injury, to submit to dictation in the management of his affairs."¹

In Connecticut, in referring to the original meaning of the term, the court said, "It signifies violence if not murder. If the defendants in their handbills and circulars used the word in its original sense in its application to the Carrington Publishing Company, there can be no doubt of their criminal intent. We prefer, however, to believe that they used it in a modified sense. As an importation from a foreign country, we may presume that they intended it in a milder sense—in a sense adapted to the laws, institutions and temper of our people. In that sense it may not have been criminal. But even here, if it means, as some high in the confidence of the trades-unions assert, absolute ruin to the business of the person.

¹ *Brace Bros. v. Evans et al*, 3 R. & Corp. Law J. 561; *Casey v. Typographical Union No. 3*, 45 Fed. Rep. 143; *Ray's Contractual Limitations*, 363.

boycotted unless he yields, then it is criminal. Instances are not wanting in our country where the boycott has been attended with more or less violence; and it cannot be denied that the natural tendency is, especially when applied by the ignorant and vicious, to attempt to make it successful by force. It too often leads to serious disturbances of the peace and even murder. We are loath, however, to assume that these defendants intended any such consequences. Nevertheless, it is a dangerous instrumentality to use; and if those instigating and resorting to it do not of their own accord take notice of its peril and voluntarily abandon its use, as we sincerely hope they will, the courts will be called upon at no distant day to recognize its dangerous tendency and treat it accordingly.”¹

Origin of the Term.—Judge Ray in his valuable work, “Contractual Limitations,” in writing of the origin and meaning of the term boycott, says, “We may gather some idea of its real meaning, however, by a reference to the circumstances under which the word originated. Those circumstances are thus narrated by Mr. Justin H. McCarthy, an Irish writer of learning and ability, who will be recognized as good authority. In his work entitled ‘England under Gladstone,’ he says: ‘The strike was supported by a form of action, or rather inaction, which soon became historical. Captain Boycott was an Englishman, an agent of Lord Earne, and a farmer of Lough Mask, in the wild and beautiful district of Connemara. In his capacity as agent he had served notices upon Lord Earne’s tenants, and the tenants suddenly retaliated in the most unexpected way by, in the language of schools and

¹ State v. Glidden, 55 Conn., 79.

society, sending Captain Boycott to Coventry in a very thorough manner. The population of the region for miles around resolved not to have anything to do with him, and, as far as they could prevent it, not to allow any one else to have anything to do with him. His life appeared to be in danger; he had to claim police protection. His servants fled from him as servants flee from their masters in some plague stricken Italian city. The awful sentence of excommunication could hardly have rendered him more helplessly alone for a time; no one would work for him; no one would supply him with food. He and his wife had to work in their own fields themselves, in most unpleasant imitation of the Theocritian shepherds and shepherdesses, and play out their grim eclogue in their deserted fields, with the shadows of armed constabulary ever at their heels. The Orangemen of the north heard of Captain Boycott and his sufferings, and the way in which he was holding his ground, and they organized assistance and sent him down armed laborers from Ulster. To prevent civil war, the authorities had to send a force of soldiers and police to Lough Mask, and Captain Boycott's harvests were brought in, and his potatoes dug, by the armed Ulster laborers, guarded always by the little army.'

"But whenever courts of law have made use of the term 'boycott,' they have applied it to some phase of conspiracy; as a combination and agreement among defendants, owners of steamers, with intent to injure plaintiffs and prevent them from obtaining cargoes for their steamers between ports, agreeing to refuse, and refusing to accept cargoes from shippers, except upon terms that shippers could not ship by plaintiff's steamers, and threatening to stop shipment of home-

ward cargoes altogether, which threat they carry into effect."¹

The name "boycott" may have been derived from the above described incident, but the offense was a conspiracy at common law and punishable. The acts of the conspirators in the case of the *King v. Sterling, Supra*, (*Tubwomen v. The Brewers of London*), were boycotts. The purpose was to ruin the farmers of the excise, by pauperizing them and rendering them incapable of paying the King his revenues, by inciting the poor of London against them to such an extent as to induce the mob to destroy the excise houses, and causing the King to remove them from office.

Boycotts at the present day are not confined to steamers. They are the concomitants of nearly every strike of considerable dimensions. They are a part of the *modus operandi*. They are directed not only against individuals but property as well, if the writer has not been misinformed. It is said that the rules and regulations of the Knights of Labor forbid members from working upon, in repairing or remodeling houses or buildings constructed by non-union workmen or builders. If this be true, it certainly is a gross outrage, and will go far to deprive that organization of the sympathy of the public. How quickly and loudly would those people complain if that policy was applied to them because they belong to the organization!

If physicians should refuse to attend them when sick, lawyers to defend them for their numerous crimes, or merchants and dealers supply them with food and raiment or anything necessary to furnish a house,

¹ Ray's Contractual Limitations, 410, 411; *State v. Glidden*, 55 Conn., 79.

then a terrible wail would go up and the law against conspiracies be speedily invoked. Undoubtedly every person has the right to select those upon whom they wish to bestow favors or their patronage. But men who will wantonly conspire to boycott inanimate objects, simply because men of their own trade and calling who did not belong to their associations built them, are monsters who place themselves outside the pale of the law and should be exterminated from the face of the earth. They place themselves on a level of the anarchist, whose religion and creed is the destruction of all existing systems of property, society, government and religion. It would seem that the Christian religion had been preached nearly eighteen hundred years in vain, when the stomachs of men get such a decided advantage over their brains, that they could compass the death, for that is just what it means, of all who do not belong to their club, organization, association or society, or who entertain different views as to the number of hours that shall constitute a day's work, the rate of wages, or the description or number of employes to be employed in certain establishments, or the manner in which men investing their money shall carry on their own business. The court in the case of the *State v. Glidden*, *supra*, was not mistaken when he said a boycott may mean murder. Men who will carry their zeal to the extent above mentioned, in their hearts intend and desire murder. They are wicked, cowardly assassins. Too cowardly to strike a blow that would both put a man they hate out of their way and out of his misery, they desire his death by the slow torture of starvation. They intend to make every citizen accessory to their crime, by compelling him through fear of persecution, not to own or live in a house built by a non-union mechanic. Such

men know that their course is outrageous, and that they would not submit to it themselves for a single moment. But they believe on that subject, as some people do as to the inexhaustible financial resources of the United States Government, that there is no limit to the forbearance and endurance of the public. They forget that the government or people that would permit a large class of industrious and well meaning citizens, liable to all the burdens of citizenship both in war and peace, to be actually starved to death simply because of differences of opinion in business transactions, would be the scoff of the world, and could not long endure. Government and law are for the protection of all classes, and when they fail in that they should be destroyed. The boycotter attributes to all the world the despicable principles that compose his own character. He knows that he would do anything for gain or pelf, and imagines that the public will submit to any outrageous exaction for the sake of making money. They lose sight of the fact that all history proves that the people, when oppression becomes too great, will endure any hardship, suffer any loss, but that they will right wrongs. Further, he loses sight of the fact that boycotts can be fought by boycotts. Those who employ labor can refuse to do so. They could use their means for their own personal enjoyment instead of building up splendid cities, large manufactories, and carrying on great business enterprises, for the purpose of giving employment to those who need it. They could withdraw their capital from the business world, and they would have a perfect legal right to do so, and hoard it, spend it in travel and personal extravagances. Every person possesses some mechanical ability, and those of moderate means could do their own work of all kinds

instead of paying it out to others. The most of the money that is spent on buildings in cities is unnecessarily squandered on embellishments, and goes to pay to skilled workmen higher wages than the professional man on an average earns. If the public should boycott the boycotter for only twelve months, the latter as a rule, would resume his normal condition by working on a farm for his board and lodging. These outrages are undoubtedly encouraged and fostered by demagogues, who will do anything for a vote. They make the workingmen believe they have grievances when they have not. Of all the mean things that crawl or creep, cringe or cower, the American demagogue is the meanest. These men imagine they are statesmen. They are simply unleashing the bloodhounds of destruction.

The following cases show the manner in and the extent to which boycotts have been conducted.

People v. Kosta.¹ The defendants were indicted for a conspiracy to prevent by intimidation, one Josephine Landgraff from carrying on her trade as a baker.

The parties and witnesses being foreigners, they were unwilling to state the causes that led to the boycott.

The manner in which the boycott was conducted sufficiently appears from the following extract from the charge of the court to the jury:

“Can a number of men so combine to so injure and to so prevent the exercise of a lawful calling, not by personal solicitation in a general way, but by congregating in numbers near the doors of the person injured, by printing circulars descriptive of the

¹ *People v. Kosta*, 4 N. Y. Crim. Rep., 429.

supposed grievances in more or less emphatic language, and by distributing such circulars near or about his doors, to his customers and to passers by? If the conspiracy here be established and the effect of the overt acts was to intimidate and by such intimidation to warn off Mrs. Landgraff's customers and the general public which might otherwise patronize her and to intimidate her, then such of the defendants as so conspired and participated in the overt acts are guilty."

People v. Wilzig.¹ George Theiss was the owner and manager of a large building in East 14th street, New York City, used as a concert hall and restaurant. He had an orchestra of thirteen pieces of music, and employed a large number of waiters, bar-keepers, and the other various attaches of an establishment of that kind. His wife was his cashier, his son was his head bar-tender, and the leader of his orchestra was a man whom he had known for ten years, and who had been associated with him in business. The accumulations of a lifetime of toil were invested by Theiss in that business—some three hundred thousand dollars; in brief all he possessed was invested there.

March 1, 1886, the defendants, strangers to him, came into his place of business, and one of them informed him that he was Paul Wilzig, of Waiter's Union, No. 1. The others were Max Dannhauser and Hans Holdorf, of the Carl Sahm Club; Michael Storch and A. Rosenberg, of Bar-tender's Union, No. 1; Michael O'Leary, Junior Squire and Almoner, of the Knights of Labor, and J. H. Beddles, of the Central Labor Union. They told Theiss that he should discharge his orchestra, and that he should not employ

¹ *People v. Wilzig*, 4 N. Y. Crim. Rep., 403.

anybody but the members of the Carl Sahm Club, and should pay them the union prices, as set forth in the constitution and by-laws of that club. Theiss informed them that he had nothing to do with the orchestra; that he had known Eschert for ten years, and that he had intrusted to him the employment of his musicians, but that he did know that Eschert and all the members of his orchestra were members of the Musical Union, a body consisting of thirty-five hundred musicians in the City of New York, and that the wages paid were in accordance with the prices fixed by such Union. Wilzig demanded that Theiss should discharge all of his waiters and employ only union waiters; that he should abolish the percentage system, and that he should not exact deposits for badges or utensils; that the Central Labor Union were to be responsible for them. Stroch and Rosenberg, of the Bar-tenders' Union, No. 1, demanded that he should discharge all his bar-tenders and employ only members of that Union, and pay the prices fixed by that Union. Theiss responded that his brother-in-law was his head bar-tender and that his son was his head-waiter, and he did not feel very much like discharging them, but since they did not belong to the Unions, the defendants insisted that Theiss should discharge them.

Then Michael O'Leary, Almoner and Junior Squire of the Knights of Labor, and J. H. Beddles of the Central Labor Union, informed Theiss that they had merely come there to make their demands, and unless they were complied with in twenty-four hours, a boycott would be placed upon his business. At the expiration of twenty-four hours, Theiss not having complied with the demands made upon him by the defendants, the boycott was ordered on. A body of men were in

front of his place of business walking up and down, wearing old and dilapidated hats pasted over with circulars, headed "boycott," "boycott," libelous in their character, printed in German and English, announcing to the public that Theiss was a foe to organized labor, and calling upon all people to abstain and refuse to visit his place; that he was an obscene man; this circular was signed by the boycott committee of the Central Labor Union. These libelous circulars were borne upon the backs of the procession. A great crowd of five hundred people collected in front of his place of business to witness this scene. The police being called upon, arrested several of the men and took them before a police magistrate, who discharged them. The boycott continued for fifteen days every afternoon and evening. The crowd that assembled there made it dangerous for any one to visit the place. The defendants caused their men to go inside the building and paste libelous circulars on the tables and in water closets, and all about the premises. The walls which had been frescoed at a vast expense, were pasted over by these circulars. They sought to create a row and bring on a fight. His son, a young man of about twenty-three, in crossing the street in front of his father's place of business, was approached by one of the men, who undertook to paste one of the circulars upon his cheek: he *knocked him down*, and was arrested in a civil action brought by the man for the purpose of annoying his father. They raised the roof of the building, which consisted of glass and iron, and set it on fire, which caused such an unendurable stench, that business had to be suspended for hours until the building could be ventilated. They set fire to the scenery on the stage. The men committing these outrages, were supplied with

refreshments, and were relieved with fresh men when tired. One Schultz, who had been furnishing Theiss with mineral waters, was compelled to desist selling to him from fear of a threatened boycott. Theiss having held out for fifteen days, at the expiration of that time, the defendants appealed to one Ehret, a brewer, who supplied Theiss with beer, and who held a mortgage of one hundred thousand dollars on his establishment, to foreclose the mortgage. As the same was not due and the interest having been promptly paid, this could not be done. They then demanded, under threat of boycott in case of refusal, that he discontinue supplying Theiss with beer. Under this threat Ehret sent for Theiss, and they, together with a representative of each of his employes, went to Ehret's brewery, where they met the defendants, who made their demands. Theiss after holding out for eight hours, in fruitless arguments and endeavors to protect his employes with whom he was perfectly satisfied and who were satisfied with him, finally yielded, to save his friend Ehret from similar outrages. But the crowning infamy came when Theiss was compelled to pay the expenses of conducting the boycott against him.

Judge Barrett, in his charge to the jury, in the case of Wilzig, descanted on the right of workmen to quit work when they pleased, which, it may not be out of place to remark, had nothing to do with the case, as employes were being forced out of employment, not only against their own will, but also that of their employer. He said *inter alia*, "It is one thing for a man or men to go about and talk to their friends, but it is quite another thing for fifty or sixty or one hundred men to band together, not for the purpose of individual persuasion, but to bring the power of com-

bination to bear in an unlawful way to injure the employer's business. And how? By parading up and down in front of his door, by placarding themselves with the word 'boycott,' by advising the passers by not to patronize the establishment, by distributing printed circulars filled with accusation, and justifying the so-called 'boycott,' and by other devices and methods calculated to induce the public to keep away from the alleged wrong-doer. Now, the law says, that that may not be done, if the persons so engaged use force, threats or intimidation. Let us see what is meant by this word intimidation. The defendants counsel seem to have the idea that if a body of men, however large, operating in the manner suggested, only avoid acts of physical violence, they are within the law; and that the employers business may be ruined with impunity, so long as no blow is struck, nor actual threat by word of mouth uttered. This is an error. The men who walk up and down in front of a man's shop may be guilty of intimidation, though they never raise a finger or utter a word. Their attitude may, nevertheless, be that of menace. They may intimidate by their numbers, their methods, their placards, their circulars and their devices. It would be very easy to illustrate, gentlemen. Take one of our large dry-goods shops, and let it be boycotted in the manner suggested. Let fifty or one hundred men, with boycott placards on their backs and hats, crowd around the doors distributing offensive circulars, and requesting customers not to patronize the shop, and how many ladies do you suppose would have sufficient resolution to pass through the crowd, and to elbow their way into the shop? Not a hand need be raised, nor an oath, nor even a violent word be uttered, and yet, in such a case, I should leave it to a jury to say

whether the attitude of those men was not, under the pretense of moral suasion, an attitude of real menace; whether the weak and the timid were not, in reality, driven away, and whether the whole object and purpose was not to intimidate the general patrons of the establishment and the general public. And if so, I should further tell them that that was intimidation within the meaning of the law, though it might not answer to prevent a few resolute and determined men who knew their rights, and dared defend them, from entering and purchasing.

“It is necessary for me to lay down these propositions to you, in view of the fact that underlying this particular charge is the prelude of the alleged conspiracy to injure Theiss’ business. Let us now consider the specific charge of the indictment, namely, the alleged extortion of one thousand dollars from Theiss. You have heard the evidence as to what transpired at Theiss’ place at the original interviews between him and the committee, of which this defendant was one; of the so-called boycott, which resulted from his refusal to accede to the committee’s demands; of the length of time it continued; of the way it was operated; of the effect it had upon Theiss’ business, and at last of the conference at Ehret’s, where Theiss finally succumbed. Theiss acknowledges that the boycott was too much for him, and that at this conference at Ehret’s he yielded to every demand of the committee (of which the defendant was still one). He did discharge his orchestra; he did take the men he was told to take; and he did pay them the prices he was told to pay. You might imagine, perhaps, that that would have ended it—but no. Now we come face to face with the specific accusation here, which is, that when he had yielded, when he was so to speak,

in the dust before these men, they made the additional demand, in substance, that he should pay the expenses to which they had been put in bringing him to the dust. That he should pay the expense of printing the very circulars, the distribution of which had annoyed him, and the wages of the very men who had paraded in front of his door distributing these annoying circulars. He declares that these committeemen threatened that unless he paid that one thousand dollars, the boycott would be continued, and not only that, but that his business would be ruined and he would be prevented from doing business elsewhere—in substance, that he would be annihilated as a business man.

“Now we come to the question of credibility. If you believe, on the whole, that the one thousand dollars was extorted from Theiss by the wrongful use of fear, the fear consisting of and being induced by a threat to do an unlawful injury to his property, then this defendant is guilty, if he participated in the act. On that question of participation it is proper to say that it is not necessary in law that the defendant should have been the person who actually and directly made the threat. ‘A person,’ says the law, ‘concerned in the commission of a crime, whether he directly commits the act constituting the offense, or aids and abets in its commission, and whether present or absent, is a principal.’”

In the case against Holdorf, Barrett, J. charged the jury as follows: “Gentlemen of the jury, although this case presents a question of extortion, pure and simple, yet underlying it and a necessary incident to its determination, is the question of lawful or unlawful combination. It will, therefore, be necessary for me to point out to you what the law is on the latter subject, so that you may determine whether the acts

which preceded the alleged extortion were legal or illegal, and if legal, what bearing they have upon the question of extortion.

“You will see at a glance that any act which may be perfectly lawful when done by an individual, may become unlawful when done by a combination of individuals. A combination of men is a very serious matter. No one man can stand up against a combination; he may successfully defend himself against a single adversary, but when his foes are numerous and are combined, he must fall. The common law proscribed combinations of individuals to effect unlawful purposes. Even combinations to advance the rate of wages were denounced as indictable conspiracies, although that has been abrogated by statute.

‘In union there is strength.’ That is the key of the situation. Our law, appreciating the position of the laboring man, has modified the common law rule, in reference to combinations and conspiracies, and has authorized this union, which is strength, for righteous purposes. The law recognizes the fact that the laboring man alone, single and unaided, is weaker than his moneyed employer, and so it permits the weaker to combine and co-operate to obtain certain just rights. Let us see to what extent, and for what purpose, the laborer is thus permitted to combine. He is permitted to combine for the purpose of obtaining an advance in the rate of wages, and for the purpose of maintaining such advance. Formerly that would have been a conspiracy, now it is lawful. But while the law has been considerate to the working man, and given him this opportunity of protecting himself against those who are supposed to be more powerful than he, yet it holds him strictly within the limits of lawful means to attain his lawful ends. Thus, although he

has the right to combine for the purpose of obtaining an advance in the rate of wages, he has no right to combine for the purpose of preventing others from exercising their lawful callings, or from working as they please. The law does not, as yet, permit such a combination as that, and I apprehend it will be a long time before any legislature can be induced to legalize combinations for the purposes so contrary to the genius of our people, and to the fundamental principle of our government. The workingman, then, has the right to combine to obtain an advance in the rate of wages, and to bring all the force of union, co-operation and united efforts to accomplish that proper and lawful object. So far, he acts both within the letter and the spirit of the law and the principles of natural justice; and in his lawful efforts to attain his end he has the sympathy of every right-minded man. If he is able to accomplish his purpose lawfully, every good man says to him, God-speed. It is only when he deviates from that line and invokes the terrible maxim that the end justifies the means, that he forfeits sympathy and good-will, and finds himself face to face with the determined opposition of every right-minded citizen. The righteous end does not justify illegal means. Nor can the righteous end ever be promoted in the long run by unlawful means. Let me illustrate. A number of men may combine together to obtain larger wages for themselves in any employment. They may stop working if their employer unjustly refuses to accede to their demands. So far, they are in the right. They may also do their utmost, by speech, writing, suasion, appeal, and in every other lawful way, to persuade their fellow-workingmen not to fill their places nor to aid the employer in his unjust attitude. But the very moment that other

men, disregarding all appeals and entreaties, find it to their own interest to fill the vacant places, they cannot be stopped by violence, threats, or intimidation. The moment workmen resort to violence to prevent their brethren from filling the vacant places, the combination becomes criminal and organized labor becomes organized law-breaking. It may be natural for men who believe earnestly in the justice of their ends to become impatient when they see that justice is slow, and to become irritable when frustrated by necessities of their brethren; but it is their duty, under even such trying circumstances, to restrain their passions and not to destroy their hopes of ultimate success by lawlessness and by trampling violently upon the rights of their brethren to work for whom they please and at such wages as they please. Workmen cannot abuse the power of union which the law has liberally granted to them by such unlawful and tyrannical acts. They must bide their time, invoke public opinion, or seek a change in the law. That they do not know that violence under such circumstances is unlawful is absurd. They are not so ignorant as some of their would-be friends pretend, and the suggestion that they are ignorant of the first principles of human rights is a slander upon them. The truth is that occasionally the end is all that is thought of; passion rules the hour, and the law is violated, and violated deliberately. This it behooves the laboring man of this country to see stopped. Should it continue or become at all general, it would not be long before the opposition to the means would run into opposition to the end, and thus all hope of amelioration would be lost.

“Now let us look at this question before us here. Of course these men had no right to demand that Theiss

should discharge his orchestra, nor his waiters, nor his bar-tenders. The people who demanded this were not in Theiss' employ. They were not seeking an advance in their own wages. They were not even seeking officiously an advance in the wages of their brethren. What they wanted was to displace their brethren and to put themselves in their brethren's places at their own prices. How it can be suggested that these men believe they had a right to do that, I cannot conceive. It seems like a tyrannical abuse of the power granted by law for righteous purposes. But such was their demand. It was clearly unlawful. The question remains whether this unlawful demand was sought to be enforced by unlawful means, and that depends upon the character of the so-called 'boycott.' Of course, gentlemen, it was unlawful to platoon the street in front of Theiss' place in great numbers, with the strange devices, with placards and circulars denouncing the men inside. That it was unlawful in the sense of the civil law, there can be no doubt whatever. It was an unlawful conspiracy within the civil law, for which appropriate action for damages would lie. Whether the men were amenable to the criminal law is another question, dependent upon intimidation. The essence of the overt act is intimidation. I charge you that it was not necessary that there should be any overt act of violence, nor any direct threat by word of mouth. If those men (parading up and down, dressed as they were, doing what they did, distributing the circulars as they did) presented even to the weak and helpless an attitude of intimidation, that is sufficient. The gentle, the timid and the weak had the right to approach and quietly enter that place of entertainment without being molested, annoyed or disturbed; and if the attitude, conduct and method of

these men were such as to deter any of Theiss' customers from entering his place, or to inspire any part of the public with the sense of danger in ignoring their appeals, then there was intimidation within the sense of the criminal law.

"That brings me to the question which I told you was the real question in this case, and upon which depends your verdict. These men are not indicted for a criminal conspiracy to prevent Theiss from exercising his lawful calling. They are indicted for extorting money as the culmination of that conspiracy. And that brings us to the seven hours' debate at Ehret's, which finally resulted in the settlement of the differences. We cannot overlook the fact that that debate was necessarily colored by the existing boycott. Every one who participated in the conference at Ehret's was aware of the existence of the boycott, and that it was vigorously proceeding. The meeting had relation to the boycott, and it was because of that boycott that Theiss succumbed. It is conceded that he succumbed. He yielded to every demand; he agreed to discharge his orchestra; he agreed to take in their places members of the Carl Sahn Club; he agreed to the demands of the United Barkeepers and of the United Waiters. All was agreed to.

"We come now to the test of the matter. At that stage of the conference, when everything had been agreed to, a demand was made for one thousand dollars to pay the expenses of the boycott; that is, the expenses to which those unions had been put in reducing Theiss to submission. It was extortion to procure that money from Theiss, with his consent, if the consent was induced by fear; that is, if the consent was wrested from him by the threat of continued injury to his property. If what Theiss says be true, not

only was he threatened with the continuance of the existing state of things, called a boycott, but he was threatened with absolute ruin; that he could not do any business at all in this city or state or country; that he would be pursued relentlessly, and that if he did not pay the one thousand dollars the expenses of the boycott would be doubled every day. It is for you to say, gentlemen, whether these threats were made; you are the judges and the sole judges of the facts. If those threats were made, I apprehend the question will be speedily solved. But assume that that was not said, leave Theiss' extreme statement out of the case, and consider Ehret's testimony, that the threat was that the boycott would not be raised unless the one thousand dollars was paid. That brings you to the consideration of the boycott, for if the one thousand dollars was extorted from Mr. Theiss by the threat of a continued unlawful injury to his property, that is enough. So, if you believe that there was a threat that the boycott should continue, and if you further believe that that boycott was criminally illegal under the instructions I have given you, and was an injury to Theiss' property, then the defendant is guilty if he participated in the extortion and aided and abetted the others in forcing the agreement from him under which the money was paid. If you believe that beyond any reasonable doubt, it is your duty to convict the defendant. It is of no consequence, I should say in conclusion, what was done with the money. The crime consists in the extortion of the money, and not in the application or enjoyment of it. Nor is it essential that the defendant should have been present when the check was finally given. If the money was paid in consequence of extortion, which took place at the interview at Ehret's, then he

is equally guilty, as though he had personally received the check.

“Thus the question is reduced to this: After Theiss had agreed to the demands, which certainly were unlawful, that is, such as no man had a right to make or to enforce by unlawful means, was the further agreement to pay one thousand dollars for the expenses of the boycott forced upon him by fear, induced by the threat of the continuance of illegal acts which were an injury to his property?

“If on the whole, you are of the opinion that that was not the case, then this defendant should be acquitted; but if you believe, beyond a reasonable doubt, on all the evidence, including the documentary evidence before you, that that was the case, it will be your duty to convict him.”

Judge Barrett, in his charge to the jury in the case against Dannhauser said *inter alia*, “In this particular case, gentlemen, let me premise by saying that it does not make the slightest difference what disposition was made of the money. Whether or not the persons who were present and signed this agreement received a penny of it for themselves is of no consequence. Whether the money, if obtained by extortion, was thrown into the sea or paid to the Central Labor Union or divided among the different unions, the crime is just the same. The crime according to the law, consists not in the enjoyment of money, but in the extortion of it. Extortion, as defined in the Code, is the obtaining of property (and of course money is property) from another, with his consent, induced by a wrongful use of fear. And fear, such as will constitute extortion, may be induced by a threat to do an unlawful injury to the property of the individual threatened. There is the case in a nutshell.

“There is another consideration to which I should call your attention lest there should be any confusion in your minds about it, and that is this: that if the money or the agreement to pay it was obtained by extortion, then every person who was present at the time the money was so obtained, or at the time the agreement to pay the money was so obtained, and aided and abetted in the acts of extortion, is just as much liable as the person who directly and actively made the threats which constituted the extortion.”

* * * “Now let us look at the facts. We find that at the time this so-called agreement was signed, a certain state of things styled a ‘boycott’ existed at Theiss’ establishment. What that state of things amounted to you have heard from the lips of the witnesses. It is not, therefore, necessary on [in] this case to define a boycott. The acts of the people who paraded up and down in front of Theiss’ place constitute the definition for the purposes of this case. What they did and were doing was the boycott there.

“I charge you that these acts were clearly unlawful, were a violation of Theiss’ legal rights, and that an unlawful injury to his property was effected thereby. There is here no disputed question of fact. What transpired at Theiss’ place was an unlawful attack upon his rights for which the combination of individuals guilty of that attack was *civilly* liable. They were also criminally liable, provided they conspired to destroy his business, to prevent his exercise of a lawful calling by force, threats, or intimidation.

“Let us now come down to this interview at Ehret’s where the alleged extortion took place. Of course what took place there must be considered with reference to the existing state of things at Theiss’ establishment. The object of that meeting was to bring

about some adjustment, whereby this unlawful state of things should stop. You must look at what took place there in that light. There was the pressure on Theiss to have this unlawful and damaging state of things stopped.

"There was the determination on the part of the labor committee to enforce their demands. It is not necessary to go over the evidence on that head. Suffice it to say that Theiss succumbed. He yielded to every demand made upon him. The musicians demanded that he should discharge his orchestra, and he agreed to discharge every man. They further demanded that he should employ their men at their prices, and to this also he agreed. In like manner he yielded to the demands of the waiters and of the bartenders.

"At that stage of the proceedings, there came this fresh demand that he should pay one thousand dollars for the expense to which the people who were boycotting him had been put in boycotting him, to pay for the printing of the circulars and also to pay the wages of the very men who had been and then were walking up and down in front of his place to injure his business.

"This is what the charge of one thousand dollars was for. It is so specified in the agreement and it is so testified by all the witnesses, including this defendant."

It would be well if every person in the country could read the remarks of Judge Barrett in passing sentence on the prisoners. He said, "Wilzig and others: The moral guilt attaching to the crime of which you have been convicted is heightened by the fact that you are *not American citizens*. Such socialistic crimes as these are gross breaches of national hospi-

tality. What would you think of a man who, having sought an asylum from oppression or poverty in a friend's house, then proceeded to violate his friend's domestic rules, to disregard his customs and to disturb the peace, order and well being of his household? Yet that is just what you and others of your union have been doing with regard to the national household of this country; a country that has welcomed you and offered you equal opportunity with its own native-born citizens. Common gratitude should have prevented you from outraging public opinion, and using here those methods of a socialistic character which you brought with you from abroad.

"I trust that your conviction may incline the hearts of men of your race, and of all other races, to respect our laws, both in their spirit and in their letter. I trust that it may teach them that their best and truest friend is public opinion, and that they should endeavor to secure and retain that all-powerful factor in every laudable and righteous effort to ameliorate their condition. Public opinion is stronger than any union; it is an all-powerful foe to evil, and it is irresistible in the end, when on the side of right. It is to that you, and such as you, should appeal, and not to your own unbridled will.

"The lesson of these convictions also, is to teach men that the taking of money to prevent or stop the so-called 'boycott,' is little better than robbery or blackmail; also, to teach that the 'peaceable and orderly' pretense by which your agents sought to evade the criminal law is a transparent sham; and that all bodies of men who parade in front of people's shops distributing offensive circulars and endeavoring to prevent public patronage, *clearly present to our juries an attitude of intimidation, and are therefore,*

conspirators who should and will be punished. I can hardly believe that you considered your action here to be right. It was simply an impulse of tyranny; an unrestrained exercise of the dangerous power of combination, and it was done in a cruel, heartless and unrelenting manner.

“But the law is not vindictive, and even to your evil conduct will not close its eyes to some grounds of extenuation. You were perhaps, misled by the erroneous judgment of the police justice who, in discharging you, certainly assumed a grave responsibility. You were, perhaps, also *deceived or misled by bad advice.* I do not know who advised you, nor what advice was given to you, but any counsel who, understanding what you were about to do, did not rebuke your action, was criminally culpable and unworthy of his honorable profession. There is another ground of extenuation, and that is that you did not do this for your own personal aggrandizement. It was unimportant so far as the trial was concerned, whether you used the money for your own enjoyment or not, but it is a matter to be now considered. All these things however, while they may have encouraged your disgraceful proceedings at Theiss’ establishment, did not suggest the almost unspeakable excesses which attended the finale of your acts, when having reduced this man to submission, having compelled him to sign the most degrading document which was ever presented to an American citizen, you completed your outrage by forcing him, still with your boycott pistol at his head, to pay, so to speak, for the powder and ball with which it was loaded, and which had been the threat of his business ruin. We are told that it has been the custom to rob in that manner, and that such atrocities have become frequent in our midst.

Let me say right here to the so-called walking delegate, that hereafter he enters people's offices (be they mercantile, manufacturing or shipping), with the danger before him of the extreme penalty of the law should he venture to exact one unlawful penny from his victims.

"Now, let us see what consideration should be given to your individual cases, and how they should be discriminated. I always wish to be merciful, and am glad to find some proper basis for mercy, and I shall not impose the extreme penalty of the law here. I appreciate the fact that you are workingmen; that you are misguided; that in the preliminary boycott you may possibly have been deceived as to the legality of what you did. As to your final act of extortion you could not have been deceived. You may not have supposed that you would be sent to state prison, but you must have known that what you did was little better than robbery, and that it was a piece of the grossest tyranny. It was wicked in itself, whether proscribed by the law or not, and therefore you had guilty hearts, unless you are willing to assume the position of being outside the pale of civilization.

"To you, Paul Wilzig, after a fair trial, and considering all the circumstances of the case, noting the fact that you were a violent spokesman, active and unrelenting in your demands, and particularly so in this last unspeakably criminal demand for money, the judgment of the law is, that you be confined at hard labor in the state prison for the period of two years and ten months.

To you, Hans Holdorf, the same punishment is awarded. You stand, in my judgment, on precisely the same footing as Wilzig. The judgment of the

law is, that you be confined at hard labor in the state prison for the period of two years and ten months.

"To you, Michael Stroh, there are additional grounds for mercy. You were not as active and ruthless as the others; in addition to that you pleaded guilty, and have expressed contrition for your offense. The judgment of the court is, that you be confined at hard labor in the State prison for the period of one year and six months.

"You, Rosenberg, stand on precisely the same footing as Stroh. The judgment of the court is that you be confined at hard labor in the state prison for the period of one year and six months.

"The last upon the list, Dannhauser, is the worst of all. There are few circumstances for merciful consideration in your case. You were more violent, if possible, than any of your fellows. You attempted to influence and intimidate other men, such as Schultz and Ehret. You were insolent and truculent in your demands. You saw two of your associates convicted after *separate trials*. You heard two others plead guilty and express contrition. You were advised by your counsel to take the same position; but you refused and spent the time of the people on a perfectly useless trial. Upon that trial you tried to escape the fate of your brethren by as plain perjury as ever was committed, and by a cowardly pretense of gentleness. Your perjury has added to your guilt, which is greater than that of your associates, and the judgment of the court is that you be confined at hard labor in the state prison for the period of three years and eight months."

Crump vs. Commonwealth.¹—A trades union associ-

¹ Crump v. Commonwealth, 84 Va. 927. See, to the same effect, Commonwealth v. Shelton, 11 Va., Law J. 324

ation known as "Richmond Typographical Union No. 90," boycotted a mercantile firm known as Baughman Bros., doing business in Richmond, Va., as printers and stationers. The defendants, Joseph M. Shelton, G. Waddy Wild and W. F. Crump were members of said union. And W. H. Mulling, James A. Healy, J. M. Lewis, Perry Jones and J. H. Schonberger were members of another trades union known as the Knights of Labor, composed of several thousand members. Baughman Bros. were engaged in their lawful business of printers and stationers. The Richmond Typographical Union No. 90 conspired to compel them to make their office a "union office," and not to employ any printer who did not belong to the union. Upon their refusal to do so, the defendants boycotted them by sending out circulars to a great many of their customers informing them, that they had "with the Knights of Labor, and all trade organizations in Richmond, boycotted them and formally notifying them that the names of all persons who should persist in trading, patronizing, or dealing with them, after notice of the boycott, would be published weekly in the "Labor Herald" as a "black list," who, in their turn, would be boycotted until they agreed to withdraw their patronage. The employes of Baughman Bros. were mercilessly hounded by publication after publication, for months, in the "Labor Herald," whereby it was attempted to excite public feeling against them and prevent them from obtaining even board and shelter. The names of customers and patrons of the firm were published in said sheet under the standing head of "Black List." The boycott extended to the hotels, boarding-houses, public schools, railroads and steamboats conducting the travel and transportation of the city.

The following are specimens of the boycott:

"Boycott Baughman Brothers and all who patronize them." "Watch out for Baughman Bros.' rats, and find out where they board. It is dangerous for honest men to board in the same house with these creatures. They are so mean that the air becomes contaminated in which they breathe." "Boycott Baughman Brothers every day in the week." "Boycott Baughman Bros. because they are enemies of honest labor." "Boycott Baughman Bros.' customers wherever you find them." "The Lynchburg boys will begin to play their hand on Messrs. Baughman's boycotted goods in a short time. The battle will not be fought in Richmond only, but all Virginia and North Carolina will raise the cry, 'Away with the goods of the tyrannical firm!'" "Let our friends remember it is the patronage of the Chesapeake & Ohio; Richmond, Fredericksburg & Potomac; Richmond & Danville, and Richmond & Alleghany railroads that is keeping Baughman Bros. up." "We are sorry to see the Exchange Hotel on the black list. There will be two thousand strangers in this city in October—none of whom will patronize a hotel or boarding-house whose name appears on that list." "The boycott on Baughman Bros. is working so good that a man cannot buy a single bristol-board from the rat firm without having his name put on the black list." "The old rat establishment is about to cave in. Let it fall with a crash that will be a warning to all enemies of labor in the future." It was proved that the conspirators declared their set purpose and persistent effort to "crush" Baughman Brothers; that their minions dogged the firm in all their transactions; followed their delivery wagons, secured the names of their patrons and used every means, short of actual physical force, to compel them to cease dealing with

Baughman Bros., thereby causing them to lose from one to two hundred and fifty customers and ten thousand dollars net profit.

The court, *inter alia*, said: "The acts alleged and proved in this case are unlawful, and incompatible with the prosperity, peace, and civilization of the country; and if they can be perpetrated with impunity by combinations of irresponsible cabals or cliques there will be the end of government, and of society itself." * * * * *

"It matters little what are the means adopted by combinations formed to intimidate employers, or coerce other journeymen, if the design or the effect of them is to interfere with the rights, or to control the free action of others. No one has a right to be hedged in and protected from competition in business; but he has a right to be free from wanton, malicious and insolent interference, disturbance or annoyance.

"Every man has a right to work for whom he pleases and for any price he can obtain; and he has the right to deal and associate with whom he chooses; or, to let severely alone, arbitrarily and contemptuously if he will, any and everybody upon earth. But this freedom of uncontrolled and unchallenged self-will does not give or imply a right, either by himself or in combination with others, to disturb, injure or obstruct another, either directly or indirectly, in his lawful business or occupation, or in his peace and security of life. Every attempt by force, threat or intimidation, to deter or control an employer in the determination of whom he will employ, or what wages he will pay, is an act of wrong and oppression; and any and every combination for such purpose is an unlawful conspiracy. The law will protect the victim and punish the movers of any such combination. In law, the offense

is the combination for the purpose, and no overt act is necessary to constitute it." * * *

"A wanton, unprovoked interference by a combination of many with the business of another for the purpose of constraining that other to discharge faithful, long-tried servants, or to employ whom he does not wish or will to employ (an interference intended to produce and likely to produce annoyance and loss to that business) will be restrained and punished by the criminal law as oppressive to the individual, injurious to the prosperity of the community, and subversive of the peace and good order of society."

Brace Bros. v. Evans.¹—The plaintiffs were proprietors and managing a steam laundry near Wilkinburgh, Pa., which was fitted up with all necessary machinery. Their large and lucrative business extended to Pittsburgh, Allegheny, and adjoining towns. They had thirteen agents who collected and delivered clothing in wagons to customers. They employed one hundred and thirty-five persons, of whom ninety were girls. In August, 1887, a difference arose between plaintiffs and some of their employes, when eleven girls were dismissed. These persuaded others to leave their employment. Some persons, representing themselves to be members of the Knights of Labor and Trades Assembly, visited the plaintiffs and demanded that all the girls should be reinstated, saying, if they were not it would be to the injury of and might result in the ruin of their business. Soon afterwards circulars were issued, giving what purported to be a history of the difficulty, alleging abusive treatment of the employes by plaintiffs and asking all persons to

¹ *Brace Bros. v. Evans*, 3 R. and Corp. Law J. 561.

cease patronizing them. This was followed by several other circulars similar in character, some of which had printed in large letters "Boycott Brace Bros." Men followed plaintiffs' wagons and took down the names of their customers and afterwards visited them and endeavored to persuade them from further patronizing them. A sign was placed upon a building on Fifth Avenue, Pittsburgh, having on it in large letters, "Headquarters Brace Bros. Boycott Committee." Men also followed plaintiffs' wagons in buggies, having banners attached to the harness on each side of the horse, printed on them in large letters, "Boycott Brace Bros." Often crowds of men and boys followed, shouting after the drivers, and in some instances, throwing mud and stones at the wagons. Persons visited plaintiffs' agents at their places of business and requested them to cease acting as such, and upon their refusal so to do circulars were distributed denouncing them and asking the public to boycott them. Men were posted in front of their places of business who distributed the circulars in large numbers, thereby collecting large and noisy crowds, which in some instances seriously interfered with the conduct of their business and required the interference of the police. As a result of this, all of the agents except one declined to further represent plaintiffs. Many of their customers, owing to these demonstrations, withdrew their patronage. The loss to plaintiffs' business from this boycott was six hundred dollars per week.

Casey v. Cincinnati Typographical Union No. 3.¹ This was an application for an injunction to restrain a boy-

¹ *Casey v. Cincinnati Typographical Union No. 3*, 45 Fed. Rep. 135; 12 L. R. A. 193.

cott against a newspaper for not unionizing its office. The boycott was directed against the patrons of the paper as well as its proprietor. By unionizing the office was meant, to publish and conduct the paper according to the customs and regulations laid down and prescribed by the defendant, and to pay the employes such wages as should be fixed by the union, and to discharge all of his employes who were not members thereof. The plaintiff refusing to comply with these demands the boycott was instituted for the purpose of destroying the circulation of the paper and its value as an advertising medium. The boycott was conducted by sending out the following circulars to customers of the newspaper.

“To Workmen and All Persons Interested in Organized Labor: The Covington Daily Commonwealth, after two years’ promising repeatedly to unionize their office, stated to a committee from the typographical union that they would not employ union printers on their paper. Therefore the typographical union asks all workingmen and women who sympathize with laborers to let the Commonwealth severely alone, and patronize those who employ union men, and who believe ‘the laborer is worthy of his hire.’”

“To Workingmen: The proprietor of the Covington Commonwealth (daily and weekly) after two years’ of opposition to organized labor, he having repeatedly promised to unionize his office, now refuses to keep his word, and says that he will not employ union printers. All workingmen and women who believe that the laborer is worthy of his hire will confer a favor on typographical union by withdrawing their patronage from the Covington Commonwealth.”

In the Union Bulletin of October 1, 1890, issued under the auspices of the defendant, and published at Cincinnati was the following :

"TAKE NOTICE.

"It is requested of all who are friendly to organized labor that they buy nothing from the following firms;
* * * The Commonwealth, (newspaper and job office) Covington, Kentucky."

The following communication was sent :

"OFFICE OF TYPOGRAPHICAL UNION No. 3,

November 3, 1890.

Messrs. Griffin—Dear Sirs : About two years ago the union compositors employed on the Covington Daily Commonwealth quit working because Col. Casey, the proprietor, would not live up to the scale of prices of this union. Mr. Casey afterwards promised to employ union men, and the union relying on the promise looked for the fulfillment of the same.

"On Monday, September 22, 1890, a committee from the Typographical Union No. 3, waited upon Mr. Casey, asked him to keep the promise he had so often made. Col. Casey informed the committee that he would not employ union printers.

"The committee then reported his answer to the union. The union now appeals to all in sympathy with labor to use their influence with Mr. Casey; try to show him the error of his way, and, failing in that, to withdraw their patronage from the 'rat' or 'scab' Commonwealth until it is unionized.

Very respectfully,

Typographical Union, No. 3.

"This union will consider it a great favor for you to give up the agency of the Commonwealth. If you do not do so we will have to consider you an enemy to organized labor."

The following was in the Union Bulletin of December, 1890.

"BOYCOTT THE COMMONWEALTH.

"We understand that Mr. Casey is going around and telling his advertisers and subscribers that his

office is now a union office; that the difficulty with the Typographical Union, No. 3, has been adjusted.

"Such is not the case however. The boycott is still on, and will be until the proprietor of that 'rat' sheet employs union men.

"We request all K. of L. assemblies, unions and workingmen to bear in mind that Mr. Casey refuses to employ, or in any way recognize the rights of labor. We ask your aid in *compelling* Mr. Casey to recognize the rights of labor. Withdraw your aid in compelling Mr. Casey to recognize the rights of labor. Withdraw your patronage from the 'scab' Commonwealth, and, if possible, let Mr. Casey know why you stopped his 'rat' paper.

"Do not patronize a merchant who advertises in the 'rat' Commonwealth.

"If you see the paper in any place of business, refuse to buy goods unless the merchant immediately stops the 'rat' sheet.

"Typographical Union, No. 3, both in letter and spirit, has performed its part of the contract with Mr. Casey, and equal good faith is expected from the proprietor of the Commonwealth; but he persistently refuses to live up to promises made.

"Members of labor organizations in Covington, Newport, Dayton, Bellevue, and Ludlow, are requested to take a personal interest in our fight against the 'rat' Commonwealth.

"When you observe the Commonwealth imprint on any work in your locality, or run across any work that you think has been done in Covington, please inquire into the matter, and serve the interests of all concerned.

"The merchant who will patronize the 'rat' Commonwealth, after the decided stand the proprietor (Mr. Casey) has taken against organized labor, does not deserve your patronage.

"We call upon every friend of organized labor to get his printing done in the union printing offices. Beware of that 'rat' trap at Fifth and Scott streets, Covington, Ky.

"Mr. Casey states that he publishes the only daily paper in Covington, and should not be discriminated against by the citizens.

"Did Mr. Casey think of discrimination when he shut out his union printers, (three of them residents of Covington), in 1888, and compelled them to seek employment elsewhere?"

The following circular was sent to a jewelry firm in Cincinnati:

"Dear Sir—We beg to call your attention to the trouble between the Covington Daily Commonwealth and Typographical Union No. 3. In the spring of 1888, the proprietor of the Commonwealth refused to pay the scale of wages agreed upon, and the union men quit working. Mr. Casey afterwards promised to pay the scale, but kept putting it off, and now refuses to keep his promise.

"The Typographical Union No. 3 has held up to its part of the contract, but Mr. Casey refuses to recognize labor in any way. Therefore we request your aid in unionizing the Commonwealth.

"You are a business man, and no doubt rely upon workmen for some trade. If you wish to retain the good-will of labor, withdraw your advertising from the Commonwealth, refuse to subscribe for the sheet, and your aid in our behalf will be highly appreciated. Very respectfully,

TYPOGRAPHICAL UNION No. 3."

Many of these circulars were sent through the mails to the advertising patrons of the paper.

State v. Glidden.¹—A boycott was instituted against the Carrington Publishing Company to compel them to discharge its workmen and employ such persons as the defendants and their associates named. And to injure and oppress the workmen in the employ of the company by depriving them of employment.

¹ State v. Glidden, 55 Conn. 46.

One of the means of boycotting was the dropping on the street the following circular :

"A word to the wise is sufficient. Boycott the Journal and Courier." There was also reference to a boycotting circular of another newspaper called The News, which, it was attempted by the State to show, had been brought to the notice of the Carrington Publishing Company, and which would have an intimidating effect upon the latter. It was as follows :

"Trades' Council of New Haven,

New Haven, Ct., Jan. 25, 1886.

"The Morning News Co.; Gentlemen— Having received from you no answer to the terms proposed by the committee at the request of your representative, we consider the same to have been rejected, and at a meeting of the committee yesterday it was decided that you should be charged, in addition to the indemnity mentioned in said terms, fifty dollars per week after the present week, as a just share of the expense incident to the boycott."

An extract from the opinion of the court in this case has been given above in this section, and the extract showing the origin of the term boycott, credited to Ray's Contractual Limitations, is taken word for word from this case.

Moores & Company v. The Bricklayers Union No. 1.¹ The Bricklayers Union No. 1, of which all the other defendants were members, is an organization of journeymen bricklayers devoted to the protection of their interests by common action upon trade subjects. It contains four hundred members, being ninety-five per cent. of the trade in the city of Cincinnati. The Union requested Parker Bros., who were contracting brick-

¹ Moores & Company v. The Bricklayers Union No. 1, 23 Weekly Law Bulletin, 48.

layers, first to pay a fine imposed upon one of their employes, who was a member of the union, and second to reinstate one apprentice who had left them, and discharge another. Parker Bros. refused. The union declared a boycott against them, and designated one of the defendants, P. H. McElroy to enforce it. He continued in the work a number of months, reporting progress each week, and received twenty-seven dollars per week and his expenses for his time. The first step in the matter was the issuance of a circular to all material men, contractors, and owners stating that the firm of Parker Bros. was in various ways discriminating against the union, and calling upon all friends of organized labor and all dealers in material to withdraw their patronage from the obnoxious firm, and concluding with this announcement, "Any firm dealing in building materials, who ignores this request, is hereby notified that we will not work his material upon any building, nor for any contractors by whom we are employed." Signed, "By order Bricklayers' Union No. 1."

Plaintiffs, who were a firm selling large quantities of lime to the building trade in the city of Cincinnati, received one of these circulars, upon which was written in McElroy's handwriting, the following: "Please answer the above. The Parker Bros. are getting your lime, and I want to know if you intend supplying them with lime. Answer as soon as possible, P. H. McElroy." Plaintiffs stopped selling lime to Parker Bros. by delivery, but the latter sent a teamster, who bought it for cash at the plaintiffs' cars. McElroy discovered this, and by authority of the union, sent to all of the plaintiffs' customers, the following circular: "Bricklayers Union No. 1, of Ohio. That members of the Bricklayers' Union will not use materials supplied by

the following dealers until further notice. Moore Lime Co.," *i. e.* plaintiffs, and four other dealers. The effect of the circular was to interfere with Moore & Co's business, and cause loss of customers who feared a similar fate.

Springhead Spinning Co. v. Riley.¹ The plaintiffs saw fit to reduce the wages of their employes, which was brought about by the great quantity of cotton, and changes in winding and spinning. At first the employes were satisfied, but afterwards became dissatisfied and struck. The defendants were members of a trade union and by sending out intimidating circulars and posting placards, prevented plaintiffs from getting other employes and greatly injured their business.

The court, *inter alia*, "Every man is at liberty to induce others, in the words of the act of Parliament, 'by persuasion or otherwise' to enter into a combination to keep up the price of wages, or the like; but directly he enters into a combination which has as its object intimidation or violence, or interfering with the perfect freedom of action of another man, it becomes an offense not only at common law, but also an offense punishable by the express enactment of the act of 6 Geo. 4, c. 129. It is clear, therefore, that the printing and publishing of these placards and advertisements by the defendants, admittedly for the purpose of intimidating workmen from entering into the service of the plaintiffs, are unlawful acts, punishable by imprisonment under 6 Geo. 4, c. 129 *and a crime at common law.*" * * * "In the present case the acts complained of are illegal and criminal by the act of Geo. 4, and it is admitted by the demurrers that they

¹ Springhead Spinning Co. v. Riley, 6 Law Rep. (Eng. Eq.) 551.

were designedly done as a part of a scheme, by threats, and intimidation, to prevent persons from accepting work from the plaintiffs, and, as a consequence, to destroy the value of the plaintiffs' property. It is in my opinion, within the jurisdiction of this court to prevent such or any other mode of destroying property."

Mogul Steamship Co. v. McGregor.¹ The conspiracy in this case was to drive the plaintiffs out of the carrying trade by means of the boycott, conducted by sending circulars or documents to different traders and their agents with whom the plaintiffs had been in the habit of dealing in the tea trade in China, to the effect that if the parties receiving them continued to deal with plaintiffs, the defendants would deny them all benefits of any future dealings with them, the defendants.

Old Dominion Steamship Co. v. McKenna et al.² The defendants, who styled themselves "Executive Board of Ocean Association of the Longshores-men Union," without legal justification, as the court found from the evidence, procured plaintiffs' workmen to quit in a body for the purpose of inflicting damage upon plaintiffs until they should accede to their demand and pay southern negroes the same wages as they did New York Longshores-men; that such procurement of the workmen to quit was in law a malicious and illegal interference with plaintiffs' business; that they declared a boycott on plaintiffs' business, and attempted to prevent them from carrying on any business as common carriers, or from using or employing its vessels,

¹ *Mogul Steamship Co. v. McGregor*, 15 Q. B. Div. 476; 23 Q. B. Div. 598.

² *Old Dominion Steamship Co. v. McKenna et al*, 30 Fed. Rep. 48.

lighters, &c., in that business, and endeavoring to stop all dealings of other persons with the plaintiff, by sending threatening notices or messages to its various steamship lines and to wharfingers and warehousemen, usually dealing with plaintiff, for the purpose of intimidating them, through threats of loss and expense, from further dealing with the plaintiff. That by these means various persons were deterred from dealing with the plaintiff and from performing existing contracts. That these last mentioned acts were misdemeanors at common law as well by section 168 of the Penal Code of New York. That associations have no more right to inflict injury upon others than individuals have. All combinations and associations designed to coerce workmen to become members of them, or to interfere with, obstruct, vex, or annoy them in working, or in obtaining work, because they are not members; or designed to prevent employers from making a just discrimination in the rate of wages paid to the skilled and the unskilled; and all associations designed to interfere with the perfect freedom of employers in any particular, the terms upon which their business shall be conducted, by means of threats of injury or loss, by interference with their property or traffic, or with their lawful employment of other persons, or designed to abridge any of these rights,—are *protanto* illegal combinations or associations; and all acts done in furtherance of such intentions by such means, and accompanied by damages, are actionable.

Statutes. Many of the states have statutory enactments against boycotting, making the offense criminal.¹

¹See the statutes of Colorado, Illinois, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Texas, Vermont and Wisconsin.

§ 10. Picketing.

Employes early learned that a strike would be futile if they could not by some means prevent others filling the places they had voluntarily surrendered. Picketing therefore, was one of the means adopted for that purpose. The system appears in the earliest cases on strikes. According to the modern doctrine, "picketing, by members of a trade union on strike, consists in posting members at all the approaches to the works struck against, for the purpose of observing and reporting the workmen going to or coming from the works, and of using such influence as may be in their power to prevent the workmen from accepting work there."¹ Picketing is not necessarily confined to members of trade unions. Strikers generally, whether they belong to trade unions or not, resort to it. As first practiced it was not so mild-mannered as the above definition seems to imply. It was intended to, and was conducted so as to intimidate.² The acts of the pickets were not confined to mere watching. They so conducted themselves as to inspire fear, and frequently resorted to such violence as to call for the interference of the police. Ordinarily picketing is a part of boycotting. Some of the cases, with good reason, held that picketing was itself intimidation. But Parliament in England, and the Legislatures of some of the states of this country, have so far yielded to the encroachments of mobs as to legalize acts and conduct that at first were crimes. It may now be stated as to the rule both in England and the United States, that if picketing is peaceably conducted, and the acts of the pickets confined to watching, observa-

¹ Black's Law Dictionary.

² Reg. v. Duffield, 5 Cox C. C., 404

tion and persuasion, it is not a criminal offense.¹ But if violence to person or property is resorted to, or workmen are so persistently followed as to inspire fear, or if their tools are hid so they cannot work, or their houses or places of business are watched or beset or the approaches thereto, then the acts of the pickets become unlawful.² It was held that under the act of Parliament, 1875, watching and attending near a place was permitted only for the purpose of obtaining and communicating information.³ In that case the court said, "in your own interest I would urge upon you that picketing is a most dangerous course to adopt. You must not persistently follow a man. You must not in short, 'dodge' a man from place to place so as to interfere with his personal liberty to do what he likes. You must not hide his tools, or his cloths or any property owned or used by him, or deprive or hinder him of the use of them. All this is reasonable enough. You must not watch or beset his house or his works or their approaches." According to this authority it is now illegal in England for pickets to persuade workmen to quit their employment. But there is no question that in this country, under decided cases, and statutes of many of the states, that persuasion is permissible.⁴ While picketing if prop-

¹ *Reg. v. Shepherd*, 11 Cox, C. C., 325; (See par. 14, § 7 Chap. 2) *Connor v. Kent*, 2 Q. B., 545; *Reg. v. Selby*, 5 Cox C. C., 495. Note.

Yet in some of the states it is made a misdemeanor by statute to entice away or persuade employes to leave their employers.

² *Reg. v. Hibbert*, 13 Cox, C. C., 82; *Reg. v. Bauld*, Id. 282.

³ *Reg. v. Bauld*, 13 Cox, C. C. 282. See § 7, *ante*.

⁴ *Perkins v. Rogg*, 28 Weekly Law Bul., 32; *Rogers v. Evarts*, 17 N. Y. Sup., 264. But in the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, South Carolina and Tennessee, it is made by a statute, a misdemeanor to persuade employes to abandon their employers, and in some of them a civil action for double the damages suffered is given.

erly conducted is lawful, yet it may be carried on in such a way and to such an extent as to become a criminal conspiracy. If, as it is expressed in one case, workmen and employers encountered "dark looks" from the pickets that is intimidation, and the picketing unlawful.¹ The large number of pickets, their conduct and attitude, jeering and shouting at employes, and persuasion and entreaty if too persistent, may constitute intimidation.² Whenever the pickets assume towards the employes an attitude of menace, then persuasion and entreaty, with words however smooth, may constitute intimidation, which will render those who use them liable to the penalties both of the civil and criminal law.³ To constitute intimidation by pickets, it is not necessary to use actual threats, if the language used is such as tends to convey the impression of intimidation.⁴ It is for the jury to say where persuasion ends and coercion or intimidation begins. Coercion may be effected by physical force or by the operation of fear upon the mind. It is possible that there should be such molestation by watching and besetting premises as might be expected to and would operate upon the mind so as to take away liberty of will, by giving rise to fear of violence by threats or to some apprehension of loss or ruin, or to feelings of annoyance.⁵

¹ *Reg. v. Druitt*, 10 Cox, C. C., 592.

² *Commonwealth v. Silvers*, 11 Pa. Co. Rep., 481; 1 Pa. Dist. Rep., 281.

³ *Rogers v. Evarts*, 17 N. Y. Sup., 264; *Reg. v. Selby*, 5 Cox C. C., 495, Note.

⁴ *Reg. v. Selby*, 5 Cox C. C., 495, Note.

⁵ *Reg. v. Hibbert*, 13 Cox C. C., 82.

§ 11. Liability of Publishers of Newspapers for Encouraging Strikes.

If an illegal conspiracy exists, whether it be to accomplish an unlawful end, or a lawful end by unlawful means, not only are the actors wrong-doers, but all those who encourage and abet are equally guilty of the wrong. The publishers of a newspaper have the right to publish fair and impartial accounts of what occurs. But when their accounts of an unlawful conspiracy are so colored as to express approval and encouragement, then they overstep the lawful province of journalism, and come within the condemnation of the law. But where the acts of strikers and pickets are lawful, then no criminal liability attaches to publishers or editors.¹

§ 12. Blacklisting.

Blacklisting is a part of the paraphernalia of a strike. It may be said to represent the malignant hate and revenge of the parties resorting to it. In its purposes and effects it is closely allied to a boycott. In fact it is sometimes resorted to in aid of a boycott. A blacklist is defined to be "a list of persons marked out for special avoidance, antagonism, or enmity on the part of those who prepare the list or those among whom it is intended to circulate; as where a trades union "blacklists" workmen who refuse to conform to its rules," &c.² It is sometimes used by strikers against citizens to deter them from continuing dealing with the party or parties struck against,³ but it is most usually resorted to by combined employers, who ex-

¹ Rogers v. Evarts, 17 N. Y., Sup. 264. See Spies et al v. The People, 122 Ill., commencing on page 1.

² Black's Law Dic.

³ Crump v. Commonwealth, 84 Va. 927.

change lists of their employes who go on strikes with the agreement that none of them will employ the workmen whose names are on the lists. In many of the states blacklisting is made a criminal offense. The constitution of North Dakota provides that the exchange of blacklists shall be prohibited.

§ 13. Employes with respect to each other.

Equality of rights and privileges between employes is the great principle of the law. The law permits workmen to combine for mutual protection, aid and improvement in their handicraft, moral and social standing and intellectual advancement, and in sickness and in death; but it will not tolerate for a single moment a combination of workmen for the oppression of workmen. Workmen who enter into combinations must do so voluntarily. Any attempt to coerce them to do so is criminal. So, also, is any attempt to compel a workman to withdraw from his society or club and join another.¹ While they have the right, when not infringing a lawful contract, to combine for an increase of wages, yet it is criminal to compel workmen against their will, and who are satisfied with the wages they are receiving, to enter into such combinations or to quit their employers.² As the law permits workmen who dislike an employer personally, to quit either singly or in a body simultaneously by preconcerted agreement, yet it is criminal for workmen to combine to compel fellow-workmen to abandon the service of masters with whom they are satisfied and against whom they have no complaint. Every employe has the right to select his own employer, and

¹ *Skinner v. Kitch*, 10 Cox, C. C. 493.

² *Commonwealth v. Dyer*, 128 Mass. 70; *Commonwealth v. Silvers*, 11 Pa., Co. Ct. R. 481.

any and every attempt by any form of intimidation to abridge his rights in this particular is a criminal conspiracy if done by two or more persons. As a workman's labor or skill in his trade or calling is his property or capital, like every other man, he has a right to keep his property or capital employed, and preventing or attempting to prevent him, by a combination of workmen, from entering upon employment, even though that employment has been abandoned by the parties seeking to prevent him, is criminal, and certainly it is criminal where such parties are not and never were in the service of the employer whose service the workman desires to enter. While workmen may by becoming members of an organization, become liable to fines and penalties imposed by the by-laws of the organization, for infractions of its rules, laws, and regulations, yet any attempt by such organization by any form of intimidation to coerce against his will any workman not a member of the organization to pay any such fine or penalty is criminal. And when an employe voluntarily quits the service of his employer, or is dismissed therefrom, it is a criminal conspiracy for his former co-employes or employes of some other employer to combine to prevent or attempt to prevent him from obtaining employment elsewhere. A workman, like everybody else, is a citizen of the country, and, like every other citizen, is entitled to the full and complete protection of the law in the use and enjoyment of his property, his labor and skill, his liberty and freedom of both person and mind, and his private and public character, and any abridgment against his will, of these rights and privileges, is a serious invasion of his citizenship and is criminal under the law.

CHAPTER IV.

STRIKES AS CONSPIRACIES—LOCKOUTS, OR RIGHTS AND LIABILITIES OF EMPLOYERS.

- § 14. Rights of employers as to their property.
- 15. Right to manage and control their business.
- 16. Right to choice of employes, and to control their number and designation.
- 17. Right to a voice as to the wages to be paid.
- 18. Right of employers to combine.
- 19. Liabilities of employers.

§ 14. Rights of Employers as to their Property.

As already stated every strike includes an actual or constructive lockout. Owing to the violence or threatened violence that attend strikes, lockouts are generally actual. It has also been stated that lockouts may be the acts of either employes or employers. Heretofore we have considered lockouts as the acts of employes under the general subject of strikes. We will now consider lockouts as the results of the act or acts of employers. Whether the act of an employer in closing his doors or gates against his own or other employes, or members of trade-unions, is legal or illegal, depends on whether he oversteps his legal rights. To determine that question, it is necessary to ascertain what his legal rights are. This arrangement is more for convenience of considering the subject than from there being any actual difference between a strike and lockout. In what has been written heretofore the rights of employers has been incidently referred to, but it will be convenient and

facilitate investigation to summarize them here. The law guards with as equal jealousy the property rights of employers, as it does those of employes. It recognizes both classes as capitalists and property owners, although in different degrees, and permits both to use and enjoy their property and capital in their own way. Therefore, any attempt by a combination of men, by violence or intimidation, obstruction, molestation, or interference, to prevent an employer from using and enjoying his property as he sees fit, is criminal. There is no decided case or statute either in England or the United States that militates against this proposition. The employer would have the right to discharge or lockout any or all employes infringing the rule.

§ 15. Right to Manage and Control their Business.

A man's business is a form of property which the law will protect. Like all other kinds of property the owner of it may use, enjoy, manage and control it in his own way, free from interference from any source, particularly from his employes. It would be preposterous for men who have not a dollar invested in a business enterprise, who are not responsible for a single penny of its debts, who from lack of education, general business information, and moral character, are wholly unfit to manage any business, to control the master in the conduct of his business affairs. Therefore, any combination of workmen to control, or attempt to control, or to hinder, vex, annoy, molest or interfere in any way with their employer in the conduct and management of his business, would be unlawful, and would be a legal excuse for the master to discharge the parties concerned in the conspiracy, even before the expiration of their term of service as

fixed by contract. The parties concerned in such confederacy are guilty of a criminal conspiracy.

§ 16. Right to Choice of Employes and to Control their Number and Designation.

If workmen have the right to choose their employers, most assuredly have employers the right to select their employes. Every one has a choice of the people of his town and neighborhood, and certainly employers who pay out their money have the right to say who shall receive it. No matter if in exercising his right of choice the employer is actuated by caprice, or by favoritism. It would be natural for him to give a preference to a relative or an old time friend. The personal habits of some as to honesty, sobriety and proper deportment might be such as to give them the preference over those who are dishonest, inebriates, and of a quarrelsome and insubordinate nature, whose very presence would create an air of dissatisfaction in any establishment where they are employed. They are invariably firebrands and elements of discontent wherever they are found. Furthermore, among any body of workmen there are varying degrees of capacity, from those possessing the highest skill to the dullard; then there are different capacities for work; some are very rapid, and some very slow. Some are conscientious, and will perform an honest day's labor, and some who can work will shirk their duty whenever they can, and perform as little labor as possible. And yet again, there are those who are accommodating and obliging, who are willing to work a little over time when there is a rush of business, and those who are the reverse, who waste much time in watching the clock, and invent all the excuses they can to avoid work, and who cannot be induced to

tarry a moment after quitting time. All these things form the greatest inducement in the world to employers to exercise the right of choice. Therefore they have the legal right to weed out the dishonest, inebriate, and incompetent employes, and put others in their places. As the employer pays the wages, and best knows whether his business is flourishing, he has the right to determine the number of workmen he can afford to and is willing to employ, and he has the right to determine for himself the number of apprentices that he will have in his service. He therefore has the right to lock out members of trade-unions who attempt to force themselves into his service, or to discharge incompetent or worthless employes whom trade-unions attempt to force him to take back.¹

§ 17. Right to a voice as to Wages to be Paid.

Employment is a contract to which there must be at least two parties competent to contract, who should enter into it with personal and mental freedom. Like any other contract, it can be nullified if procured by force, violence, intimidation or duress. The consideration is the most important element in all contracts, and without a valuable one they are void, as a general rule. Wages are the consideration moving from the employer to the employe. They are the price paid for the property of the employe, and he certainly has the same right to say what price he will pay for labor as a man has a right to say what price he will pay for a horse. The price that will be paid by one party and accepted by the other is the subject of negotiation and

¹ See *King v. Nield*, 6 East 417; *Rex v. Salter*, 5 Esp. 125; *Rex v. Ferguson*, 2 Starkie 431; *Conner v. Kent*, *Gibson v. Lawson*, and *Curran v. Treleaven*, 2 Q. B. (1891) 545.

agreement. In England up to the year 1824, the prices of labor generally were fixed by statute, and Lord Campbell administered a rebuke from the bench to an employer who paid more than was authorized by statute, and admonished him that he was laying himself criminally liable in so doing. Parliament was compelled to fix not only the price of labor but of many other things—including the compensation to physicians and nurses. This necessity was brought about by the great plague in 1665, which so decimated the population in England, and particularly in London, that there was a great scarcity of laborers. Those who could and would labor charged the most exorbitant prices for their services. The same was true of physicians and nurses. In 1824–5 the entire flood of labor laws was repealed by the acts of 5 Geo. 4, c. 95, and 6 Geo. 4, c. 129, the last named statute, with some slight changes, being now the law of England, and its main features adopted in many of the states by legislative enactment. By that statute employer and employe were relegated to their natural right of making such contracts as they pleased, and it very carefully withdrew from the contracting parties every element of intimidation and duress, not only by the contracting parties but by outsiders as well. The ancient and oppressive labor laws of England never got a foothold in this country, and the time never was that employe and employer could not enter into such contract as suited them. The adoption of the Constitution of the United States found this class of contracts on an equal footing with all others, and extended to them its protection. It may become a question whether any statute of a state or of the United States, conferring upon trade unions the right to step between employer and employe and set aside their contracts

and make contracts for them, is unconstitutional as impairing the obligation of contracts. So far as judicial decisions in this country are concerned, the right of the employer to an equal voice as to the rate of wages to be paid has been steadily upheld, and all attempts of combinations or trade unions by force, violence, intimidation, interference, molestation and obstruction to compel him to pay wages he does not freely and willingly agree to pay have been sternly rebuked.

§ 18. Right of Employers to Combine.

Employers have the same right to combine for mutual aid and assistance, mental and moral improvement, to consider the wants and necessities of their business, to determine the rate of wages they will pay and the general management and conduct of their business, as have employes. Or, to state it briefly, they have the right to combine or associate themselves together for any lawful purpose. It was held in an English case,¹ that the act of 6 Geo. 4, c. 129, § 3, conferred upon employers the right to combine for the purpose of regulating wages. But they have no right to combine to infringe any of the legal rights of employes or to oppress them. If, therefore, they should combine to, by force, violence or intimidation, compel an employe not to do what he has a legal right to do, or to deprive him of any of his legal rights as an employe, they would be guilty of a criminal conspiracy.

§ 19. Liabilities of Employers.

There is scarcely any data in decided cases on the criminal liability of employers in their relations to

¹ *Reg. v. Rowlands et al*, 5 Cox C. C. 436, 466; *Reg. v. Druitt*, 10 Cox C. C. 592.

their employes so far as strikes and lock-outs are concerned, for the reason that so far as the reported cases are concerned the employes have almost invariably been the aggressors and violators of the law. But in some of the states blacklisting by employers is made criminal; also failure to provide seats for female employes, for their use when not actively employed in the discharge of their duties; for employing children of tender years, or working them over a certain number of hours per day; or to keep factories, workshops, mercantile or other establishments clean and well ventilated so as to preserve the health of employes; or for allowing over a certain number of workmen to be employed at a time in a coal mine, failing to provide sufficient outlets, to preserve proper ventilation, and make all reasonable provision for the safety of the workmen.

CHAPTER V.

STRIKES AS CONSPIRACIES—IN RESTRAINT OF TRADE AND COMMERCE.

- § 20. As affecting the price of commodities.
- 21. As affecting transportation.
- 22. When a bond is in restraint of trade.
- 23. Under the Interstate Commerce Act.

§ 20. As affecting the Price of Commodities.

The most casual investigation shows that strikes have a direct bearing upon the public, and that the public are deeply interested in the question of wages. First, it is interested and is directly concerned in having employes receive for their services a compensation sufficient to enable them to support themselves and families, for if they are not able to support themselves the public must support them. Second, they are interested in not having wages so high as to compel dealers to put such a price on goods and the necessities of life as to make it a burden for all and an impossibility for others to purchase them. If shoemakers, tailors, or the makers of any other articles of wearing apparel, demand and receive such high wages that their employers, in order to escape loss, are compelled to put such price upon their goods that but a few persons could buy it is apparent that most of the people of the world would either be obliged to go unclad or steal. If bakers should demand and receive such prices for their services that bread would have to be sold for five dollars a loaf it

is evident that millions of people would starve, or get their bread by riots. In New York, and possibly in other states, it is made by statute a criminal conspiracy for two or more persons to conspire, by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements, or property belonging to or used by another, to commit an act injurious to trade or commerce.¹ Under that statute, some shoemakers were convicted of conspiring to increase the price of making coarse boots, by compelling an employer to dismiss a shoemaker for making such boots for less than one dollar per pair.² The case was reversed in the appellate court on account of the insufficiency of the indictment. But the court held that the acts complained of constituted an offense injurious to trade. Trade was defined to be mutual traffic among ourselves, or the buying, selling, or exchange of articles between members of the same community. The court said, "the raising of wages and a conspiracy, confederacy or mutual agreement among journeymen for that purpose is a matter of public concern, and in which the public have a deep interest."

But, in New Jersey,³ it was held that a combination of employes to compel their employer to dismiss certain workmen, by simultaneously quitting his service in a body, was not indictable under the statute of New Jersey as an injury to trade, but that such acts were indictable at common law. That to be indictable under the statute the injury to trade must be direct, such as to depress any branch of trade by

¹ R. S., N. Y. Penal Code, 1883, p. 34, § 168.

² *People v. Fisher*, 14 Wend. 1; see *State v. Donaldson*, 32 N. J. L. 151.

³ *State v. Donaldson, et al.*, 32 N. J. L. 151.

false rumors. That in the case before the court the injury was too remote.

§ 21. As Affecting Transportation.

In modern times transportation is inseparably connected with trade. Nearly all of the carrying of the civilized portion of the world, but particularly of the United States, is done by railroads on land, or by steamboats, ships or vessels on water. These lines of communication are so long and so important to all classes of people, the transit over them so rapid, that thousands of people do their family trading with stores and houses and establishments hundreds of miles distant, and some have nearly all of their daily food conveyed to them by express companies, from cities from sixty to one hundred miles distant. In fact it is sometimes more convenient, takes less time, is more satisfactory and costs less to trade with distant cities by means of the telegraph and express companies, than it is to go to a store in one's own city. These carriers convey the mails, which most deeply concern every man, woman and child in the country. Therefore, they partake largely of the characteristics of public institutions. In some particulars they are public institutions and are so treated by the law. Both the national and state governments can and do regulate them. The Constitution of the United States confers upon Congress the power to regulate commerce between the states. This implies the right to regulate and control lines of transportation, for there could be no commerce without them. Railroads could not exist and could not be built were it not for state and national legislation, which creates corporations and gives them power to take lands by condemnation, on which to build their road, when the owners

stubbornly refuse to sell them. By this power the finest farms can be utterly ruined, the most beautiful and costly residences of the rich, or the cottage or cabin of the poor, which are hallowed by associations of the past, can be torn down and removed despite the protests of the owners, and on their sites a railroad track laid or a depot or cattle pen erected. The most desirable streets of towns and cities can be converted into road beds, and made the shifting ground for the making up of trains. Statutory law steps in and prescribes the manner in which railroads shall be managed. It regulates the rate of speed at which trains shall be run, the whistles of the engine in giving warning of their approach, and the ringing of bells at crossings, and in passing through streets in towns, villages and cities, or by depots. It provides for the qualifications of engineers as to habits of sobriety, and as to color-blindness so far as to be sure that they can distinguish different colored signal-lights and know whether warning of danger is being given, or notice that all's well. The character and qualifications of conductors, brakemen and baggage-masters are provided for. Also the manner of construction of cars and engines. A limitation is placed on the right of their employes to strike; severe penalties provided for those who molest, impede or endanger the movement and control of trains. And all this must be so. Every year millions of passengers are carried over the various railroads of this country and untold millions worth of merchandise and property of all kinds. The law holds them to the highest degree of responsibility. It makes them insurers of the safety of both persons and property.¹ When any one makes any

¹ *Porcher v. Northwestern R. Co.*, 14 Richardson, 181; *Forward v. Pittard*, 1 Durnford & East, 27.

protest as to what seems to him to be an usurpation and invasion of his rights, he is met by all who have anything to do with the building and management of railroads, from the civil engineer, surveyor, constable, sheriff, marshal, commissioners, lawyers, and courts, with the remark: "It is a matter of public necessity. The interests of the individual must be subordinated to that of the public."— Like stringent laws and regulations exist as to carriers by water. Congress, in the exercise of the power conferred upon it by the constitution, has enacted what is known as the inter-state commerce law, which places railroads largely under the control of the National government. Therefore it cannot but be that any strike against a railroad or other common carrier, or any interference with their management and control, has a direct influence upon the shipment of merchandise and other property by delaying it in reaching its destination, or if of a perishable nature utterly destroying its value. Further, the fear of loss in transit prevents purchasers from buying or shippers from shipping. For these reasons strikes against common carriers are in restraint of trade. But the degree of criminal liability depends upon the laws of the different states or of the United States where she has exclusive jurisdiction. The cases in the note will throw light on this subject.¹

¹ *Gulf, Colo. & Santa Fe R. R. Co. v. Levi*, 76 Texas, 337; 18 Am. St. Rep. 45; *Sherman, Hall & Co. v. Pa. R. R. Co.*, 3 Am. and Eng. R. R. Cases, 274; *Wertheimer v. Pa. R. R. Co.*, 3 Am. and Eng. R. R. Cases, 279, 1 Fed. Rep. 232; 17 Blatchf. C. C., 421; *Hicks v. Rodocanichi*, 2 Q. B. Div. (1891) 626; *Law Times Rep.*, N. S. (Eng.) 300; 4 Alb. Law, J. 462; *Budgett & Co. v. Binnington & Co.*, L. R. Q. B. (1891) 35; *Pitts., Ft. Wayne & Ohio R. Co. v. Hazen*, 84 Ill. 36, 25 Am. Rep. 422; *Pitts., Cincinnati & St. Louis R. W. Co. v. Hollowell* 65, Ind. 188; 32 Am. Rep. 63; *Geismer v. Lake Shore & Mich. Southern R. Co.* 102 N. Y. 563; 55 Am. Rep. 837; *Indpls. & St. Louis R. Co. v. Juntgen*, 10 Bradwell (Ill.) 295; *Reed v. St. Louis, Kansas City &*

§ 22. When a Bond is in Restraint of Trade.

In England a bond made by eighteen manufacturers, in a separate penalty of five hundred pounds, reciting the fact that the obligators were respectively owners of spinning mills and employed in them many workmen; and that there were combinations among divers persons whereby persons otherwise willing to be employed were deterred by fear of social persecution and other injuries from hiring themselves to work, and whereby the legal control of the obligors of their property was injuriously interfered with; that these combinations were sustained by funds arbitrarily levied and extorted by way of a tax or rate on the persons employed and receiving wages from the obligors; and, in the opinion of the obligors, it had become necessary to take measures for vindicating their legal rights to the control of their property, which would also best sustain the rights of the laborer to the free disposal of his skill and industry; that therefore the obligors had agreed to carry on their works in regard to the amount of wages, the time of engagement of workpeople, the hours of work, the suspending of work, and the general discipline and management of their

Northern R. Co., 60 Mo. 199; *Bartlett v. Pitts.*, Cincinnati & St. Louis R. Co., 94 Ind. 281; 18 Am. & Eng. R. R. Cases, 549; *Lake Shore & Mich Southern R. Co. v. Bennett*, 89 Ind. 457; 6 Am. & Eng. R. R. Cases, 391; *Forward v. Pittard*, 1 Durnford & East, 27; *Blackstock v. N. Y. & Erie R. Co.* 20 N. Y. 48; *Delaware, Lackawanna & Western R. Co. v. Bowns*, 58 N. Y. 573; *Lewis v. Ludwick*, 6 Colo. 368; 98 Am. Dec. 454; *Hass v. Kansas City & Ft. Scott & Gulf R. Co.*, 7 So. East Rep. 629; *United States v. Patterson*, 55 Fed. Rep. 605; *Frauk v. Denver & R. G. Ry. Co.*, 23 Fed. Rep. 757; *Waterhouse v. Comer* (C. C.) 55 Fed. Rep. 149; *Hagan v. Blindellet et al*, 54 Fed. Rep. 40; 56 Fed. Rep. 696; *Wolfe v. Matthews*, L. R. 21 Ch. Div. (1882) 194; *Homby v. Close*, L. R. 2 Q. B. 153; *Farrar v. Close*, L. R. 4 Q. B. 602; *Morris Run Coal Co. v. Barclay Coal Co.*, 68 Pa. St. 173.

works in conformity to law, for twelve months, in conformity with the resolutions of a majority of the obligors present at any meeting to be convened; that for the purpose of carrying the agreement into effect the obligors entered into the bond, and the condition was that if the obligors for twelve calendar months should carry on, or wholly or partially suspend carrying on, their works in regard to the matters aforesaid, in conformity with the resolutions of a majority of the obligors present at a meeting to be held as mentioned, then the bond, as to each person so performing, to be void; and the days, place and other circumstances of the proposed meetings were set out; the obligor to hold the money recovered in trust for all the obligors; with power for a majority of the obligors present to release the obligors from performance, was held to be in restraint of trade. An action was brought on the bond against one of the obligors who by plea set out the bond and condition, and alleged that there was no consideration except as appeared by the condition. Lord Campbell held on demurrer to the plea that the bond was void as being in restraint of trade. The reasons by which this conclusion was reached, in the opinion of Judge Crompton, were that the combinations disclosed in the pleadings were illegal and indictable at common law as tending directly to impede and interfere with the free course of trade and manufacture. He said that the precedents of indictments for combinations of two or more persons to raise wages, and for other offenses of this nature, which were all framed on the common law and not under any of the statutes on the subject, sufficiently showed what the common law was in this respect. That in *Rex v. Mawbey*, 6 T. R. 619, Grose, J. assumed that the illegality of such com-

binations was well known law. That combinations of this nature, whether on the part of the workmen to increase, or of the masters to lower, wages were equally illegal. That while recent enactments no longer made it punishable to combine to raise or lower the rate of wages and to regulate the hours of labor, yet they did not make such combinations legal agreements in the sense that the breach of them can be enforced at law; and still less do they apply to make enforceable at law an agreement not being a mere stipulation among the parties themselves which any one might withdraw from at pleasure, but binding and tying themselves up under a penalty to close their works if a majority of a particular body shall dictate to them to do so. That the simultaneous closing of all the works would injuriously affect the public. That the object of all closing their works at the same time was a means of compulsion against the workmen. That the most objectionable feature of the bond was that it took away the freedom of action of the individual to carry on the trade, and to open and close his works according as it might be for his interest or that of the public. That it was mischievous for the parties to give up this right of judging for themselves and place themselves and their trade under the dictation either of a majority or a committee of delegates. That giving up the right to retire from the combination interfered with that freedom of trade which it is the policy of the law to protect. He said, "I think it not to be endured that majorities and delegates of workmen or masters should in effect be allowed to legislate upon questions immediately affecting the happiness of the working classes and the prosperity of the trade and commerce of the whole nation."

Lord Campbell concurred with Crompton, J., in most that he said, but would not say that such combinations as mentioned in the bond would be illegal at common law, so as to render them liable to an indictment for conspiracy. After considering whether the bond would be illegal under the statute of 6 Geo. 4, c. 129, §3, and coming to the conclusion that it would not be, he said, "I am therefore obliged to bring the bond within the category of written instruments which are not avoided by positive statute and are not so far illegal at common law as that the framing of them is a criminal offense, but which cannot be enforced by action, being considered void as against public policy.

Judge Erle dissented from the opinion of Crompton, and thought the bond, instead of being in restraint of trade, would be in favor of it.¹

§ 23. Under the Interstate Commerce act.

To constitute an offense under the act of July 2, 1890, declaring contracts, combinations, or conspiracies in restraint of trade illegal, there must be a conspiracy to engross or monopolize the market. It is not sufficient if there is only an intention to drive certain competitors out of the field by violence, annoyance or otherwise. The purpose of monopolizing an entire trade may be accomplished by violence and intimidation.² Rule 12 of an association of locomotive engineers, styled the "Brotherhood of Locomotive Engineers," which provides "that hereafter, when an issue has been sustained by the grand chief, and carried into effect by the Brotherhood of Locomotive Engineers, it shall be recognized as a violation of obligations for a member of the Brotherhood of Locomotive

¹ *Hilton v. Eckersley*, 6 Ellis and Blackburn, 47.

² *United States v. Patterson*, (C. C.) 55 Fed. Rep. 605.

Engineers who may be employed on a railroad run in connection with or adjacent to said road, to handle the property belonging to said railroad or system in any way that may benefit said company with which the Brotherhood of Locomotive Engineers are at issue, until the grievances, or issues, or differences of any nature or kind have been amicably settled," is plainly a rule or agreement in restraint of trade or commerce, and in violation of section 1 of the act of Congress of July 2, 1890, making it a misdemeanor punishable by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both fine and imprisonment in the discretion of the court. Under the several clauses of the interstate commerce law construed with section 5440 of the Revised Statutes a combination of persons without regard to their occupation, having the effect to defeat the provisions of the interstate commerce law prohibiting discriminations in the transportation of freight and passengers, and further to restrain the trade or commerce of the country, will be liable to the penalties of the act.¹ A combination of persons to prevent ship owners from shipping a crew, by inducing the crew to abandon the ship as she was about to sail, when another crew could not be procured for nine days, and then only with the assistance of the police authorities and the protection of a restraining order, comes within the interstate commerce law for the protection of trade and commerce against unlawful restraints and monopolies.² A conspiracy to induce the officers of a railroad company subject to the provision of the interstate commerce law, and its locomotive engineers, to receive, handle and haul interstate freight from another

¹ *Waterhouse v. Comer*, 55 Fed. Rep., 149.

² *Hagen et al, v. Blindell et al*, 54 Fed. Rep. 40; 56 Fed. Rep., 696.

railroad, with the intention of injuring the latter, is a conspiracy to commit the misdemeanor mentioned in section 10 of said act, and if any one of the conspirators does an act in furtherance thereof, all of them are, under section 5440 of the Revised Statutes, guilty.¹

¹ Toledo A. A. & N. M. Ry. Co. *v.* Pa. Co., 54 Fed. Rep., 730; S. C. Id., 746.

CHAPTER VI.

FELONIOUS STRIKES.

- § 24. Treason.
- 25. Homicide.
- 26. Extortion.
- 27. Arson.

§ 24. Treason.

We have been considering that class of crimes growing out of strikes which are looked upon as minor offenses and usually denominated misdemeanors. We have seen that they were offenses not only at common law but have been made such by statute. It is now the purpose to briefly notice some of those crimes frequently committed by strikers and which are *mala in se*, known as felonies, and which the law stamps as heinous. It is a well established principle of criminal law that persons in the prosecution of unlawful enterprises are liable for more serious offenses committed by them or any one of their number, although it was not the original purpose or design to commit them. Hence, men intending only to commit a riot are liable for a homicide committed while engaged in riotous proceedings. But it is not the purpose here to go into that phase of the subject, but to consider only those felonies where the declared or implied purposes of organizations were, and where the facts and circumstances show it to have been, the original object to commit them. Socialistic, and its more aggravated form, anarchistic, organizations are *per se* criminal and revolutionary. Their declared purposes are a com-

plete revolution and demolition of existing forms of government, systems of law, society and property. No matter how much in earnest and conscientious the members of these organizations are in their beliefs, such organizations are criminal. Their very earnestness and conscientiousness make them all the more dangerous. Revolutionists have always been in earnest and conscientious. Socialism is the sower of the seed of discontent, and anarchy the criminal reaper. These criminal organizations have always found and always will find among the ignorant, discontented, unfortunate and viciously inclined portion of the working people plenty of willing coadjutors. It is to this class of people they look for recruits. Their debased mental and moral conditions form a soil kindly receptive of the seeds of crime. Therefore, the law will not allow itself to be hoodwinked by the cry of the natural and inalienable right of men to think and act as they please, and to entertain such religious and political beliefs as they see fit. Every one can believe as he may choose, but acting is quite a different matter. Even these organizations control every act of their members with the greatest rigor and tyranny. Members of such organizations are liable to the penalties for the crimes they commit in furtherance of the purposes of their organizations, although the ostensible purpose may be to carry out some benevolent or humane object, such as ameliorating the condition of workmen. The courts have found from the evidence before them that these organizations are mainly instituted and maintained by foreigners who have no sympathy or love for our institutions, the most of them not naturalized.¹ The names of parties defendant in criminal proceedings

¹ *Commonwealth v. Silvers*, 11 Pa. County Ct. Rep. 481; 1 Pa. Dist. Rep. 281.

growing out of strikes and boycotts and the highest grades of felonies show that they are products not indigenous to American soil.

Where the purposes of organizations are revolutionary they necessarily cannot be carried into effect without resort to force, for no government surrenders its existence without a fight. Force brought against a government simply means treason. Treason is classed as the greatest offense against public law, because it includes and sweeps into its vortex all other crimes. There is not now, as formerly, such a thing as constructive treason, but the offense in this country must consist in levying war either against the United States government or a state government. There must be an actual mustering of force and an overt act. The object of treason may be either the overthrow of the government, or to prevent the enforcement of the law, or to compel, by intimidation, the legislature to repeal, amend, or enact laws. It is apparent that, judged of in this light, treason has frequently been committed in this country by strikers. The fact that they have been prosecuted for lesser offenses does not alter the truth that they committed the crime of treason. The most notable adjudicated case in this country is the one known as the "Anarchist case," at Chicago, Illinois, in 1886.¹ The defendants were not indicted or tried for treason, but the evidence in the case clearly showed them guilty of that crime. Spies and Parsons were editors of newspapers in Chicago, and the other defendants were employed in different capacities about printing offices or the management of newspapers. For one year all of them, by editorials and public and private speeches, had been doing all they

¹ *Spies et al, v. The People*, 122 Ill., 1-267.

could to incite the workingmen of Chicago to acts of violence to persons and property. They were all members of an organization known as the "International Workingmen's Association," or the "International Arbeiter Association," generally called the "Internationals." The openly avowed purpose of this association and of the defendants was a relentless warfare on what they styled the capitalists and privileged classes. To reach these classes they openly advocated in public speeches, newspaper editorials and personal appeals, the destruction of all government, of all existing systems of property, and of society, of all persons who had anything to do with enforcing law and order, judges and lawyers, and their vengeance against the police and state militia knew no bounds. There was also an armed socialistic organization called the "Lehr und Wehr Verein," whose members were also members of the "Internationals." The latter organization was divided into what were called "groups," located in different parts of the city of Chicago. During the year 1886 there was great excitement among working people throughout the United States, growing out of a determined effort on their part to compel employers to accept eight hours for a day's labor. In Chicago the first day of May, 1886, had been set more than a year prior thereto as the time to put the movement into effect. The defendants and socialistic and anarchistic associations employed that time by all the means in their power to incite the working classes to acts of lawlessness, and to unite them all with the "Internationals" and anarchists in a determined effort to overthrow the existing order of things. There were constant appeals to the workingmen to arm themselves. The means of arming was fully discussed. The workingmen were

advised to sell their watches and buy arms—to buy them on the instalment plan. They were advised to club together and buy a quantity at a time and in that way get them cheaper. Above all it was urged to learn how to make and use dynamite, as it would be the cheapest and most dangerous. Spies in his speeches and editorials explained how it could be made and used, and in expatiating on its destructive properties grew ecstatic in his language and said: “Dynamite! Of all the good stuff, this is the stuff. Stuff several pounds of this sublime stuff into an inch pipe (gas or water pipe), plug up both ends, insert a cap with a fuse attached, place this in the immediate neighborhood of a lot of rich loafers who live by the sweat of other people’s brows, and light the fuse. A most cheerful and gratifying result will follow. In giving dynamite to the down-trodden millions of the globe science has done its best work. The dear stuff can be carried around in the pocket without danger, while it is a formidable weapon against any force of militia, police or detectives that may want to stifle the cry for justice that goes forth from the plundered slaves. It is something not very ornamental, but exceedingly useful. It can be used against persons and things. It is better to use it against the former than against bricks and masonry. It is a genuine boon to the disinherited, while it brings terror and fear to the robbers.” They not only advised them to arm themselves, but they urged them to drill in the manual of arms and evolutions. This was done secretly in different places in the city. Also Herr Most’s book on “Revolutionary Warfare,” which gave instructions how to make dynamite and other explosives, how to use and take care of it, and how to set fire to cities and ships by means of naphtha, and a

preparation from yellow phosphor and bi-sulphide of carbon, was liberally distributed. Lingg, one of the defendants, a young foreigner and an ardent anarchist, manufactured dynamite. Thus the hand of the imported anarchist is seen through the entire history of the agitation that led to the Haymarket disaster. The newspapers that were the organs of these conspirators were the "Arbiter Zeitung," "Alarm," and "Anarchist." As the first of May approached the defendants began to throw off the mask, and openly declared that while they would work for the eight hour rule yet that was not what they were really aiming at. That they wished not only to overthrow the government of the state of Illinois, its laws of property and social system, but of all the other states, and to establish a new system. There was a regular plan adopted for the posting in different parts of the city of the "armed sections," as they were called, and by certain manoeuvres to fool the police, annihilate them, simultaneously set fire to Chicago in different places and reduce it to ashes, and inaugurate an indiscriminate slaughter of the "ruling classes," that is, property owners. War was actually levied and an overt act committed by the massacre of the police at the "Haymarket." Such a conspiracy and acts certainly constituted treason.

The year 1886 was fruitful of treasonable strikes. They extended all along the railroad lines from New York to Chicago and west and south of Chicago. Travel and transportation were not only impeded, but in many instances entirely interrupted; both the civil and military authorities in some of the states, but particularly in Indiana, were wholly unable to control the riotous and determined strikers.¹

¹ Bartlett v. Pitts. Cincinnati & St. Louis R. Co., 94 Ind. 281; Lake

In Pennsylvania, the great strike of 1892, at Homestead, against the Carnegie works, was treated as a rebellion. The strikers beleaguered the works, placed the town in a state of siege, not permitting any one, even residents of the town, to pass through the lines, fired upon a barge conveying the sheriff and deputies to the works to protect them from destruction and also workmen remaining at work, with rifles and a cannon, killing and wounding some of the deputies, and compelling them to surrender. After they surrendered they were treated by the mob in a most brutal manner. The sheriff of the county was powerless to preserve order or protect life or property, and the law within the vicinity of the mob entirely set at naught. The state of Pennsylvania sent an army, composed of her militia, to Homestead to reinstate the civil authorities and protect life and property. Indictments for treason and murder followed.

When a conspiracy has for its object an injury to the state it becomes high treason.¹

§ 25. Homicide.

In the case of *Spies et al, v. The People*, mentioned in the preceding section, the conspiracy culminated in the massacre of several policemen at the Haymarket in Chicago. Pursuant to preconcerted arrangement

Shore & Mich. Southern R. Co. *v. Bennett*, 89 Ind. 457; 6 Am. and Eng. R. R. Cases, 391; Pitts., Cincinnati & St. Louis R. Co. *v. Hollowell*, 65 Ind. 188; Sherman, Hall & Co. *v. Pa. R. Co.*, 3 Am. and Eng. R. R. Cases, 274; Wertheimer *v. Pa. R. Co.*, 17 Blatchf. (C. C.) 421; 1 Fed. Rep. 232; 3 Am. and Eng. R. R. Cases, 279; Pitts., Ft. Wayne & Chicago R. Co. *v. Hazen*, 84 Ill. 36; Hass *v. Kansas City, Ft. Scott & Gulf R. Co.*, 7 So. East. Rep. 629; Gulf, Colo. & Santa Fe Ry. Co. *v. Levi*, 76 Texas 337; 18 Am. State Rep. 45.

¹ Reg. *v. Hibbert et al*, 13 Cox C. C., 82.

among workingmen throughout the United States, the workingmen in Chicago on the first of May, 1886, made a demand that eight working hours be recognized as a day's work. The demand was refused and the result was a general strike and lockout. As is invariably the case, the strikers undertook to prevent their places being filled by new employes. This led to a conflict between them and the police, in the efforts of the latter to repel an assault of the former on the factory of McCormick. In this encounter one or two strikers were killed and several wounded and a policeman seriously wounded and injured. The result of the encounter, however, was in favor of the police. This took place May 3, 1886, in the afternoon. There was evidence showing that most of the defendants were present in that riot or near by lending aid and encouragement to the rioters. In the afternoon of that day a circular, written by Spies, called the "revenge circular," was printed and numerous distributed, and it was printed the next day in the Arbeiter Zeitung. This circular was written in a style intended to and which did enrage the working people against all who had anything to do with preserving the public peace. In the Arbeiter Zeitung of May 4, 1886, was an inflammatory article written by Spies. It was headed :

" Blood.

"Lead and Powder as a Cure for dissatisfied Workmen !
Wounded !

Thus are the Eight-hour Men to be intimidated !

This is Law and Order !

Brave Girls parading the City !

The Law and Order Beast frightens the Hungry
Children away with Clubs !"

Then he proceeded :

“Wage-workers, yesterday the police of this city murdered at the McCormick factory, so far as it can now be ascertained, four of your brothers, and wounded, more or less seriously, some twenty-five more. If brothers who defended themselves with stones, (a few of them had little snappers in the shape of revolvers,) had been provided with good weapons and a single dynamite bomb, not one of the murderers would have escaped his well-merited fate. As it was, only four of them were disfigured. That is too bad. The massacre yesterday took place in order to fill the forty thousand workmen of this city with fear and terror—took place in order to force back into the yoke of slavery the laborers who had become dissatisfied and mutinous. Will they succeed in this? Will they not find, at last, that they miscalculated? The near future will answer this question. We will not anticipate the course of events with surmises.”

He then proceeds to state that at the time of the riot and just before it commenced he was present at an immense meeting of workingmen a quarter of a mile from McCormick's factory. He thus describes the part he took in the meeting:

“Then after a few more addresses were made, the president introduced Mr. August Spies, who had been invited as a speaker. A Pole or Bohemian cried out: ‘That is a socialist!’ and again there arose a storm of disapprobation, and a roaring noise, which proved sufficiently that these ignorant people had been incited against the socialists by their priests. But the speaker did not lose his presence of mind. He continued speaking, and very soon the utmost quiet prevailed. He told them that they must realize their strength over against a little handful of lumber-yard owners; that they must not recede from the demands once made by them. The issue lay in their hands. All they needed was resolution, and the ‘bosses’ would be compelled to and would give in.

"At this moment some persons in the background cried out (either in Polish or Bohemian): 'On to McCormick's! Let us drive off the scabs!' About two hundred men left the crowd, and ran toward McCormick's.

"The speaker did not know what was the matter, and continued his speech. When he had finished he was appointed a member of a committee to notify the 'bosses' that the strikers had no concessions to make. Then a Pole spoke. While he spoke a patrol-wagon rushed up towards McCormick's. The crowd began to break up. In about three minutes several shots were heard near McCormick's factory, and these were followed by others. At the same time about seventy-five well-fed, large and strong murderers, under the command of a fat police lieutenant, were marching towards the factory, and on their heels followed three patrol-wagons besides full of law and order beasts; two hundred policemen were on the spot in less than ten or fifteen minutes, and the firing on fleeing workmen and women resembled a promiscuous bush-hunt. The writer of this hastened to the factory as soon as the first shots were fired, and a comrade urged the assembly to hasten to the rescue of their brothers who were being murdered; but no one stirred. * * * The writer fell in with a young Irishman who knew him. 'What miserable sons of b—— are those,' he shouted to him, 'who will not turn a hand while their brothers are being shot down in cold blood! We have dragged away two. I think they are dead. If you have any influence with the people, for Heaven's sake run back and urge them to follow you.' The writer ran back. He employed the people to come along—those who had revolvers in their pockets—but it was in vain. With an exasperating indifference they put

their hands in their pockets, and marched home, babbling as if the whole affair did not concern them in the least. The revolvers were still cracking, and fresh detachments of police here and there bombarded with stones were hastening to the battle ground. The battle was lost.

"It was in the neighborhood of half-past three o'clock when the little crowd of between two and three hundred men reached McCormick's factory. Policeman West tried to hold them back with his revolver. A shower of stones for an answer put him to flight. He was so roughly handled that he was afterwards found about one hundred paces from the place, half dead, and groaning fearfully. The small crowd shouted: 'Get out, you d—d scab,' 'you miserable traitors,' and bombarded the factory with stones. The scabs were in mortal terror, when, at this moment, the Hinman-street patrol wagon, summoned by telephone, came rattling along with thirteen murderers. When they were about to make an immediate attack with their clubs, they were received with a shower of stones. 'Back! Disperse!' cried the lieutenant, and the next minute there was a report. The gang had fired on the strikers. They pretended, subsequently, that they shot over their heads. But be that as it may, a few of the strikers had little snappers of revolvers, and with these returned the fire. In the meantime, other detachments had arrived, and the whole band of murderers now opened fire on the little company—twenty thousand, as estimated by the police organ, the 'Herald,'—while the whole assembly scarcely numbered eight thousand! Such lies are told. With their weapons, mainly stones, the people fought with admirable bravery. They laid out half a dozen bluecoats, and their round bellies, developed to extreme fatness

in idleness and luxury, tumbled about, groaning on the ground."

The defendants, Parsons, Schwab, Fielden and Fischer, had been equally active, either in writing, making speeches or by personal entreaty, in trying to bring on a conflict. Louis Lingg was known to have made dynamite bombs after the instructions given in Most's book, and, on the evening of the 4th May, left a lot of them at a rendezvous of anarchists where anyone who desired to do so could help himself.

Pursuant to the revenge circular and advertisements and personal efforts of the defendants, a very large crowd of mostly workingmen assembled at the Haymarket, where inflammatory speeches were made by several speakers, among them Spies, Parsons and Fielden. While the latter was making the closing speech at about half-past ten o'clock in the evening one hundred and eighty policemen marched into the crowd from their station near by and ordered the meeting to disperse. Immediately a bomb was thrown into the ranks of the police, which exploded and killed six policemen, among them one Degan, and seriously wounded sixty others. It was not known who threw the bomb, but it was conceded that no one of the defendants threw it. Pieces of the bomb were taken out of the bodies of the dead and a wounded by-stander, and they corresponded exactly with bombs that Lingg was known to have made. The defendants were indicted for the murder of Degan, and tried and convicted, and after appeals to the Supreme Court of Illinois and the Supreme Court of the United States, five of them suffered the death penalty. One was sentenced to imprisonment in the penitentiary, and the governor commuted the death

penalty of one to imprisonment in the penitentiary. Lingg blew his head off with a dynamite cartridge the day before the execution.

They were indicted under the statute of Illinois for aiding, abetting, assisting, advising and encouraging the murder of Degan.

Engle was shown to have been at home at the time of the explosion of the bomb, and Fischer was in a saloon a few steps from the wagon on which the speaking took place. But this undoubtedly was in pursuance of the plan of the revolutionists, or "Internationals," which required parties planning an outrage not to be present at its commission, but to leave the execution of the crime to one who is a stranger in the community. This is of course to avoid identification and arrest. On the subject of the absence of parties at the time of the commission of a crime the court said, "Where persons combine to stand by one another in a breach of the peace with a general resolution to resist all opposers, and in the execution of their design a murder is committed, all of the company are equally principals in the murder, though at the time of the act some of them were at such a distance as to be out of view, if the murder be in furtherance of the common design. Wharton on Homicide, (2d Ed.) section 358; *Williams v. The People*, 54 Ill., 422."

Spies said in his testimony about the Revenge Circular: "I wrote it to arouse the working people, who are stupid and ignorant, to a consciousness of the condition that they were in." In the circular was the following. "Avenge the atrocious murder which has been committed upon your brothers to-day, and which will be likely to be committed upon you to-morrow." The court says, "In the minds of 'stupid and igno-

rant' workmen, already excited about the eight-hour day of labor, the language here quoted could mean nothing else than an attack similar to the one which took place in the south-west part of the city on Monday would probably be made upon the workmen by the police on Tuesday."

The opinion quotes as follows: "He who inflames people's minds and induces them by violent means to accomplish an illegal object is himself a rioter, though he take no part in the riot. *Regina v. Sharpe*, 3 Cox C. C. 288."

"One is responsible for what wrong flows directly from his corrupt intentions. * * * If he set in motion the physical power of another he is liable for its result. If he contemplated the result he is answerable, though it is produced in a manner he did not contemplate. * * * If he awoke into action an indiscriminate power he is responsible. If he gave directions vaguely and incautiously, and the person receiving them acted according to what he might have foreseen would be the understanding, he is responsible." 1 Bishop on Crim. Law, sec. 641.

And then proceeds, "We can conceive that it can make no difference whether the mind is affected by inflammatory words addressed to the reader through the newspaper organ of a society to which he belongs, or to the hearer through the spoken words of an orator whom he looks up to as a representative of his own peculiar class," and cites *Queen v. Most*, L. R. 7 Q. B. D. 244.

Schwab had been at the Haymarket in the early part of the evening, but a speaker being wanted to address a large meeting of workmen at Deering, he went to that place for that purpose, and was not present at the Haymarket at the time of the explosion.

It was held that this fact did not lessen his responsibility for the death of Degan, if his acts and declarations helped to cause that death.

Spies in his speech at the Haymarket said, "The fight is going on. Now is the chance to strike for the existence of the oppressed classes. The oppressors want us to be content; they will kill us. The thought of liberty which inspired your sires to fight for their freedom ought to animate you to-day. The day is not far distant when we will resort to hanging these men (applause, and cries of 'hang them now!'). — is the man who created the row Monday, and he must be held responsible for the murder of our brothers. (Cries of 'hang him!') Don't make any threats, they are of no avail. Whenever you get ready to do something, do it, and don't make any threats beforehand. There are in the city to-day between forty and fifty thousand men locked out because they refuse to obey the supreme will or dictation of a small number of men. The families of twenty-five or thirty thousand men are starving because their husbands and fathers are not men enough to withstand and resist the dictation of a few thieves on a grand scale, to put out of the power of a few men to say whether they should work or not. Would they place their lives, their happiness, everything out of the arbitrary power of a few rascals, who have been raised in idleness and luxury upon the fruits of your labor. Will you stand that?"

The speech of Fielden was in the same strain as that of Spies.

Parsons said at the Haymarket, "What good are these strikes going to do? Do you think that anything will be accomplished by them? Do you think the workingmen are going to gain their point? No,

no, they will not. The result of them will be that you will have to go back to work for less money than you are getting." The record recites, "Then he went on to say that it was not the individual always, but the system. That the government should be destroyed. It was the wrong government, and these people who supported it had to be destroyed *en masse*. The temper of the crowd was extremely turbulent, especially after that speech he made about the workingman not gaining anything by the strike. The crowd seemed to be thoroughly in sympathy with the speaker, and applauded almost every utterance."

Neebe was a stockholder in the *Arbeiter Zeitung*, and next to Spies and Schwab the most active man in its management. He distributed the "Revenge" circular Monday evening before the Haymarket disaster. He was also prominently connected with the "Internationals."

§ 26. Extortion.

As has already been shown in section 9 in the case of the *People v. Wilzig*, money obtained by boycotting to pay the expenses of the boycott is extortion.

§ 27. Arson.

It is arson for riotous strikers to set fire to a house. In England it was held that rioters could be prosecuted under the statute of 7 and 8, Geo. 4. c. 30, § 8 for setting fire to a house, without being indicted under § 2 of that statute for arson. Some riotous strikers from coal mines set fire to and otherwise injured the houses of two ministers, and were convicted under the above statute. It was also held that all rioters present were guilty.¹

¹ *Regina v. Harris, et al.* Carr. & Marsh. 661; *Regina v. Simpson, et al.* *Id.* 669. See *Reg. v. Sharpe*, 3 Cox, C. C. 288.

CHAPTER VII.

LABOR ORGANIZATIONS.

§ 28. Lawfulness of.

29. Unlawful Organizations.

§ 28. Lawfulness of.

The organizations here treated of are such as are created under statutes, and are either corporations or quasi corporations, or voluntary associations of workmen for purposes which the mind will readily recognize as being just and proper. What has been written has been of organizations, for it would be impossible to have a strike of workmen without the existence of some plan, agreement or organization among them. Up to this point we have been treating of illegal organizations originated for special occasions. But the purpose now is to perform the more congenial task of treating of those kinds of organizations that are not tainted with crime, and the objects of which are praiseworthy. Of the two classes, master and servant, the latter were probably the first to organize. Organization first took place among the freedmen centuries ago, and was a matter of absolute necessity. They were brought into competition with slave labor, (which bore a striking resemblance to convict and other labor of our time) and were naturally driven into the towns and cities, where they took to what is known as trades, in contradistinction to the farm labor performed by slaves. But these unions had a desperate

struggle for existence. They were anon encouraged and persecuted under the Romans. The Emperor Constantine was friendly to them and protected and encouraged them. The beneficial results to flow from such organizations were shown in ancient times. Members of trades-unions attained the highest proficiency in their various callings. They were compelled to, because of the fact that every Roman had a horde of slaves and there would have been little show for the freedman had he not possessed greater skill than the bondman. In England the right of organization among working people was not known until comparatively recent times. Up to the year 1825 it was, under the common law, a criminal conspiracy for workmen to combine to increase their wages, or in fact to combine for any purpose against their masters. But the statute of 6 George 4, c. 129, changed that. By the consensus of English authority heretofore cited, and which need not be repeated here, that statute legalized organizations within certain limits, provided intimidation in any form did not enter into the combination.

Workmen have the right to organize for their mutual aid, benefit and protection to resist the oppression of employers, to assist each other in sickness and in death, or when they are out of employment.¹ These are purposes that the mind will instantly recognize not only as lawful, but as praiseworthy and commendable.

But the right of workmen to form organizations, or trades-unions as they are called, rests on more certain and stable authority than decisions of courts. In this country they are recognized and permitted both by national and state legislation.

¹ *Sweeny v. Torrence*, 11 County Ct. Rep. (Pa.) 497; 1 Pa. Dist. Rep. 622; *Reg. v. Hewitt*, 5 Cox C. C. 162.

Congress has defined the term "National Trade Union" to mean "any association of working people having two or more branches in the states or territories of the United States for the purpose of aiding its members to become more skillful and efficient workers, the promotion of their general intelligence, the elevation of their character, the regulation of their wages and their hours and conditions of labor, the protection of their individual rights in the prosecution of their trade or trades, the raising of funds for the benefit of the sick, disabled, or unemployed members, or the families of deceased members, or for such other object or objects for which working people may lawfully combine, having in view their mutual protection or benefit."

Articles of incorporation are to be filed in the office of the Recorder of the District of Columbia, giving the name by which it is to be known; they shall have the right to sue and be sued, plead and be impleaded, to grant and receive, in its corporate or technical name both real, personal and mixed property, and the proceeds and income thereof for the purposes and objects as defined in its charter, provided that each union shall hold only so much real estate as may be necessary for the immediate purposes of its incorporation.

That such unions shall have power to make and establish constitutions, rules and by-laws necessary to carry out their lawful objects, and to alter and amend the same at pleasure; to define the duties and powers of their officers, prescribe the mode of their election, term of office, and establish branches and sub-unions in any territory of the United States; and that the headquarters of incorporated trade-unions shall be located in the District of Columbia.¹

¹ Act of June 29, 1886, §§ 1-5; 24 Stat. L. 86; or in Cogley's Digest, page 157, par. 97-101.

In Iowa, California, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Ohio, South Dakota, Wyoming and Kansas, provisions are made by statute for the incorporation of trade-unions, or the legality of such bodies is fully recognized. Probably such organizations could be made in all the states, under their general incorporation laws, or laws for forming benevolent voluntary organizations.

But it is expressly provided that the objects of the organizations must be lawful, such as mutual aid and assistance, in securing by lawful means advance of wages, individual and collective intellectual and moral improvement, increased skill and proficiency in trades and callings, the care of the sick and burial of the dead, the support of members out of employment, and the support of widows and orphans of deceased members. Men in other lines of business have similar organizations and there is no good reason why the laboring classes should not.

§ 29. Unlawful Organizations.

But the law will not permit a lawful organization to be used for an unlawful purpose. It will permit men to organize to advance their interests, but it will not permit them to organize to invade the rights of others. The law has no pets or favorites; all must stand, so far as legal rights are concerned, on the same broad plain of equality. Hence it is no protection to a member of a legal organization to attempt to carry out any of its lawful purposes in an unlawful manner, and all members participating therein are guilty of a criminal offense.¹ Where the ostensible purpose of an organization is legal, but the real secret purpose illegal, then the organization is unlawful.²

¹ Commonwealth v. Hunt, 4 Metc. (Mass.) 111.

² Commonwealth v. Hunt, 4 Metc. (Mass.) 111.

But where the purposes of organizations of workingmen are to be accomplished by illegal means, by violence, intimidation and destruction of property, or the overthrow of government or systems of society and property, then such organizations are illegal, for they are in reality treasonable. Of such organizations are the "International Workingmen's Association" and the "Lehr und Wehr Verein" of Chicago.¹ In England it has been held that organizations of workingpeople which require its members to take, on initiation into them, an unlawful oath, such as, "you shall be true to every journeyman shearman, and not to hurt any of them, and you shall not divulge any of their secrets, so help you God;"² or "we of our own free will declare we will not make any buttons under 6 d. and 10 d., that we will keep all the secrets of the lodge, and never give our consent that any of the money should be divided or appropriated to any other purpose than the use of the union; if we did might our souls drop into the bottomless pit;"³ or, the witness not being able to remember the exact words, but remembered in substance that something was said about their souls dropping into the bottomless pit if they did not keep secret what was done by the society;⁴ previous to taking the oath the parties being blindfolded led to a table and required to kneel, and after taking the oath unblindfolded and required to look upon the picture of death or a skull and cross-bones, were illegal oaths under the act of 57 Geo. 3, c.'s 19, 123 and 137, and that such organizations were illegal. Also

¹ *Spies et al, v. The People*, 122 Ill., 1-267.

² *King v. Marks*, 3 East, 157.

³ *Rex. v. Ball*, 6 Carrington & Payne, 563.

⁴ *Rex. v. Lovelass*, 5 Carrington & Payne, 596; *Rex. v. Dixon*, 6 Id., 601.

that a trade-union the main object of which was the support of members when on a strike did not come within the statute legalizing friendly societies, and were illegal as being in restraint of trade, by encouraging strikes and preventing men working during a strike.¹

¹ *Hornby v. Close*, Law Rep., 2 Q. B., 153; *Farrar v. Close*, Law Rep., 4 Q. B., 602.

CHAPTER VIII.

CIVIL REMEDIES—AT LAW.

- § 30. Enticing servants—preventing completion of contracts.
- 31. Against employes conspiring to quit work.
- 32. Damages by boycott.

§ 30. Enticing Servants—Preventing Completion of Contracts.

We have been considering heretofore the liability and remedies of employes and employers from a criminal standpoint. In criminal law the intention of parties is looked at, and as a rule if there is no wrongful or unlawful intention there is no criminal liability. But when it comes to civil remedies the rule is different; then a party is liable in damages for inadvertence, carelessness, or mistake where there is no intention to do a wrong, as well as where there is an evil or malicious intention, or such a reckless disregard of the rights of others as to amount to such intention. When it comes to civil remedies the great question is, has one party suffered injury, loss or damage by the acts of some other party? In such cases, or rather in a certain class of such cases, the only figure that intention or malice has to do with them is either to increase or mitigate the damages. In considering the criminal phase of strikes we have seen that it is not now, as a general rule, unlawful to persuade or entice employes to quit the service of their employers, but when it comes to considering the civil aspect of the case it is quite a different thing.

There is no better established rule of the common law, than that a master has a right of action for damages for enticing away his servants. Every person *sui juris* has a right to make use of his labor in any lawful employment on his own behalf, or to hire it out in the service of others. This is one of the first and highest of civil rights.¹ It therefore follows as a logical sequence, that a workman having disposed of his property—his labor—to his employer, is legally bound according to the terms of his contract to surrender that property to his employer; and whoever persuades or entices him to withdraw his services from his master in violation of a contract commits a tort for which he is answerable in damages.² We are not without adjudicated cases on this and all other questions of damages, for infringing the rights of employers by strikes, and do not have to rely on abstract reasoning. An action for tort will lie for enticing away journeymen shoemakers from a manufacturer and thereby rendering it difficult or impossible for him to carry on his business; or to induce shoemakers who have entered into a contract to make a certain quantity of shoes out of material furnished by the manufacturer and return the shoes to the factory, to return the stock unfinished; or inducing shoemakers who have made a contract to make a certain number of cases of shoes by a certain time to quit the employer's service and refuse to perform their contract;³ for inviting the workmen of a piano manufacturer to dinner, getting them intoxicated and while in that

¹ Cooley on Torts, 2d Ed. 326.

² Wood's Master and Servant, §§ 230, 231; *Harvester v. Meinhardt*, 9 Abb. N. C. (N. Y.) 393; *Bixby v. Dunlap*, 56 N. H. 456; *Haskins v. Royster*, 70 N. C. 601; *Hart v. Aldridge*, 1 Cowper, 54.

³ *Walker v. Cronin*, 107 Mass., 553.

condition inducing them to quit the service of their employer for whom they worked by the piece and not for a specified time, and entet that of the person enticing them, a rival piano manufacturer;¹ for procuring a strike of workmen in the employ of a steamship company to prevent it from carrying on its business as a common carrier, using or employing its vessels and lighters;² for enticing away and receiving into his employ a maker of white glazed brick, with notice that the workman was bound by written contract to work for a specified time;³ for by persuasion and threats inducing plantation laborers from renewing and to abandon their contracts to work on a plantation whereby it remained uncultivated for one year, this being done to render worthless the lease to the plantation of the employer;⁴ for enticing a farm laborer to quit the service of his employer before the expiration of his contract time of service, the person so enticing having knowledge of the contract;⁵ for enticing away freedmen servants who had agreed in writing to work on a plantation, but which had not been approved by the Freedman's Bureau.⁶ But an action will not lie for inducing a servant to quit the service of his master on the expiration of the time for which he was hired;⁷ nor for a conspiracy of persons to control the business of shipping-masters of a city by requiring members to conform to certain rules and rates, and to prevent their boarders from shipping in

¹ *Gunter v. Astor*, 4 Moore Rep. (Eng.) 12. Contra. *Rogers v. Evarts*, 17 N. Y. S. 264.

² *Old Dominion Steamship Co. v. McKenna*, 30 Fed. Rep. 48.

³ *Bowen v. Hall*, 6 Q. B. Div. 333.

⁴ *Dixon v. Dixon*, La. Ann. 1261.

⁵ *Jones v. Blocker*, 43 Ga. 331.

⁶ *Salter v. Howard*, 43 Ga. 601.

⁷ *Boston Glass Manufactory v. Binney*, 4 Pick. (Mass.) 425.

any vessel where any of the crew are shipped from boarding-houses not in good standing with the association, and to abstain from shipping men from any office after the association shall have suspended business with it, and who in pursuance thereof take their men out of ships because men of a certain party are in the same and preventing men from shipping with that party unless illegal acts are shown.¹ In the states of Arkansas, Kentucky, Louisiana, Mississippi, in addition to criminal liability, a party enticing an employe bound by contract for a specified time, such party having knowledge of such contract, away from his employer before the expiration of his term of service, is made liable by statute, to the employer for double the amount of damages sustained, except in Kentucky, where he is liable only for the damages sustained; and in Tennessee he is liable if he does not have knowledge of an existing contract, if he does not discharge the person hired after notice that he is under contract to another person.

§ 31. Against Employes Conspiring to Quit Work.

An action for damages will lie against journeymen tailors who, pursuant to a conspiracy among themselves, simultaneously stop work and return to their employer work in an unfinished state, when the employer could not get workmen to complete the garments, thus rendering them worthless;² and against members of an association of Freestone Cutters, to recover back a fine assessed against and paid by a member at Boston, Massachusetts, for having some stone-cutting which he was under contract to furnish for use in the building of the Roman Catholic Cathedral

¹ *Bowen v. Matherson*, 14 Allen (96 Mass.), 499.

² *Mapstick v. Ramge*, 9 Neb., 390; 2 Northwest Rep., 739.

at Boston done in New York city, because he could not get members of the association to do the work when he had the material.¹ The payment of the fine was enforced by a strike of his workmen.

§ 32. For Damages by Boycott.

A civil action will lie for damages resulting from a boycott. Thus an action was sustained for injuring the business of a steamship company as a common carrier, by inducing its employes to quit work in a body for the purpose of injuring its business as a common carrier, and preventing it getting new employes, and to shut off all dealings with other persons by sending threatening notices or messages to various steamship lines, to wharfingers and warehousemen usually dealing with it, designed to intimidate them through fear of loss, by means of which they refused to perform existing contracts and withheld further dealings with it.² Also where members of a trade-union boycotting an employer to compel him to conform to the rules of the union as to the employment of apprentices and delinquent members boycotted a material man for continuing, despite threatening notices sent him, to supply material to the employer. Held that an action would lie against the union and all its members engaged in the conspiracy.³ But where firms of shipowners trading between China and Europe, for the purpose of obtaining a monopoly of the tea trade formed themselves into an association and offered to merchants and shippers in China who shipped their tea exclusively in vessels belonging to

¹ *Carew v. Rutherford*, 106 Mass., 1.

² *Old Dominion Steamship Co. v. McKenna et al*, 30 Fed. Rep., 48.

³ *Moores & Co. v. Bricklayers' Union No. 1*, 23 Weekly Law Bul., 48.

members of the association a rebate of five per cent. on all freights paid by them, rival shipowners also trading between China and Europe were excluded from the association, and in consequence thereof sustained great damages and were driven out of the carrying tea trade. They undertook to act independantly of the association, and loaded their ships already in China with tea at ruinously low rates of freight rather than have them sail home empty. The association knowing they could not carry freight at such prices, in order to put a stop to it sent letters to the merchants and shippers in China, saying that such of them as refused or failed to ship exclusively in vessels belonging to members of the association would lose all benefit from the trade that had theretofore accrued to them from the members of the association. The rival shippers seeing that they could not again carry freight at such low rates brought action against the members of the association for damages for compelling the merchants and shippers in China, by said letters, from shipping in their vessels. Held, that as the association was formed with a view of keeping the trade in their own hands and not with the intention of ruining the trade of the plaintiffs, or through any personal malice or ill-will towards them, an action for conspiracy was not maintainable. That acts done in the ordinary course of trade are not actionable.¹

¹ *The Mogul Steamship Co. v. McGregor*, 23 Law Rep. Q. B. Div. 598; 21 L. R. Q. B. D. 544; 15 L. R. Q. B. D. 476.

CHAPTER IX.

CIVIL REMEDIES.—IN EQUITY.

§ 33. By Injunction.

34. By Mandamus.

35. Receivers.—Contempt of Court.

§ 33. By Injunction.

An injunction will lie to restrain boycotts¹ and picketing for the purpose of preventing by intimidation, molestation or coercion in any form, employes from entering the service of an employer. This will be done to stop proceedings, whether connected with crime or not, which go to the immediate, or tend to the ultimate, destruction of property.² Acts which amount to a nuisance, such as carrying intimidating banners, with inscriptions calculated to injure one's business or deter workmen from entering or continuing in the service of an employer, in front of the employer's place of business,³ or any acts of intimidation calculated to injure one's business, provided they exist and continue at the time of the application or

¹ *Brace Bros. v. Evans*, 3 R. and Corp. Law J. 561; *Casey v. Cincinnati Typographical Union*, No. 3, 45 Fed. Rep., 135; 12 L. R. A., 193; *State v. Glidden*, 55 Conn., 46; *Moore & Co. v. The Bricklayers' Union* No. 1, 23 Weekly Law Bul., 48; *Springhead Spinning Co. v. Riley*, 6 Law Rep. (Eng. Eq.), 551; *Mogul Steamship Co. v. McGregor*, 15 L. R. Q. B. D., 476; 23 *Id.*, 598. (For a statement of these cases see section 9 ante.)

² *Perkins v. Rogg*, 18 Weekly Law Bul., 32; *Rogers v. Evarts*, 17 N. Y. S., 264.

³ *Sherry v. Perkins*, 147 Mass., 212.

hearing, will be enjoined.¹ Equity will also interfere to restrain the use of the funds of an industrial society in aid of a strike.² An interim injunction was granted to restrain the publication of placards and circulars falsely representing that a strike was on at a certain manufacturing establishment, which injuriously affected its business.³ An injunction was entertained to restrain a combination of persons from interfering with and preventing the shipping of a crew on a vessel, as being in restraint of trade and commerce under section 1 of the Act of Congress of July 2, 1890, 26 Stat. L. 209, known as the interstate commerce act. Held, that the injunction would lie to prevent a multiplicity of suits at law, and for the reason that damages at law for interrupting the business and intercepting the profits of pending enterprises and voyages must, in their nature, be conjectural and not susceptible of proof and there was not an adequate remedy at law.⁴ The circuit courts of the United States have jurisdiction to restrain violations of the interstate commerce law to the irreparable injury of complainant, without regard to the citizenship of the parties. Therefore a combination to induce the officers of a common carrier corporation subject to the provisions of the interstate commerce law, and its locomotive engineers, to refuse to receive, handle, and haul interstate freight from another like common carrier, in order to injure the latter, is a conspiracy described in section ten of the interstate commerce act, and all

¹ *Sweeny v. Torrence*, 11 County Ct. Rep., (Pa.) 497; 1 Pa. Dist. Rep., 622.

² *Warburton v. Hiddlesfield Industrial Society*, 1 Q. B. Div., (1892) 213.

³ *Collard v. Marshall*, Law Rep., [Eng.] [1892] 1 Ch. 571.

⁴ *Hagan, et al. v. Blindellet, et al.*, 54 Fed. Rep. 40; 56 *Id.* 696.

persons engaged in it are guilty, and the common carrier against which the conspiracy is directed has a cause of action against those participating in it. If the injury will be irreparable a preliminary and temporary mandatory injunction will issue against the company and its employes threatening the injury, restraining them from refusing to afford the proper interchange of interstate freight and traffic facilities. Also a preliminary injunction may issue against the chief member of such a conspiracy to restrain him from giving the order and signal which will result and is intended to result in unlawful and irreparable injuries. Where such chief member has already issued such an unlawful, willful and criminal order, the injurious effect of which will be continuing, the court may by mandatory injunction compel him to rescind the same, especially when the necessary effect of the order or signal is to induce and procure flagrant violations of an injunction previously issued.¹ Where a labor organization has declared a boycott against a railroad, and connecting roads are therefore refusing or seem about to refuse to afford equal facilities to the boycotted road, in violation of section three of the interstate commerce act, they may be compelled to do so by mandatory injunction, since the case is urgent, the rights of parties free from reasonable doubt and the duty sought to be enforced is imposed by law. Such injunction is binding upon all officers and employes of companies enjoined having notice thereof, whether they are made parties or not.²

Where an injunction is asked against the interference with interstate commerce by combinations of striking workmen, the fact that the strike has ended

¹ Toledo A. A. & N. M. Ry. Co. v. Pa. Co., 54 Fed. Rep., 730.

² Toledo A. A. & N. M. Ry. Co. v. Pa. Co., 54 Fed. Rep., 746.

and labor been resumed since the filing of the bill is no ground for refusing the injunction. The court said, "I know of no rule which is better settled than the question as to the maintenance of a bill, and the granting of relief to a complainant is to be determined by the status existing at the time of filing the bill. Rights do not ebb and flow. If they are invaded, and recourse to courts of justice is rendered necessary, it is no defense to the invasion of a right, either admitted or proved, that since the institution of the suit the invasion has ceased." The combination declared illegal by the interstate commerce act applies to combinations of laborers as well as capitalists. And the fact that the combination is in its origin and general purposes innocent and lawful is no ground of defense when the combination is turned to the unlawful purpose of restraining interstate and foreign commerce. A combination of men to secure or compel the employment of none but union men becomes a combination in restraint of interstate commerce within the meaning of the statute, when in order to gain its ends it seeks to enforce, and does enforce by violence and intimidation, a discontinuance of labor in all departments of business, including the transportation of goods from state to state, and to and from foreign nations.¹

A court of equity will not interfere by injunction to restrain a committee of an illegal trade-union from expelling one of its members.²

An injunction will lie to restrain a trespass to the property of an employer by employes on a strike,³

¹ *United States v. Workingmen's Amalgamated Council of New Orleans*, (C. C.) 54 Fed. Rep. 994.

² *Rigby v. Connel*, 42 Law Times Rep. (N. S.) 139.

³ *New York, Lake Shore & West. R. Co. v. Wenger*, 17 Weekly Law Bul. 306.

and to restrain a combination of persons from enticing away servants, if violence, force, intimidation or coercion is used against the workmen.¹ Also to restrain members of a society known as the "London West End Farriers' Trade Society" from using its funds in carrying out an amalgamation of the society with the "Permanent Amalgamated Farriers' Protection Society." While it was admitted that the first named society, but for the statute of 34 and 35 Vict. c. 31, would have been an unlawful association, as some of its purposes were in restraint of trade, yet by virtue of said statute the plaintiffs having contributed to the fund were entitled to prevent a misapplication thereof. The rule in *Rigby v. Connol* held not to apply in this case.²

§ 34. By Mandamus.

Mandamus will lie to compel members of an unincorporated and voluntary lawful association of workmen receiving and depositing in their own names as trustees, in a bank, money of such association, to draw an order on said bank in favor of a committee thereof, and appointed for the purpose to enable the association to withdraw its funds.³ But where there are two separate bodies of men applying to be registered under the same name as a trade union, under and by virtue of the trade union act of 1871, (34 and 35 Vict. c. 31), the registrar cannot be compelled by mandate to register either.⁴ Mandamus was refused to compel a board of supervisors of a county to pay the expenses of the sheriff in protecting property

¹ *Harvester v. Meinhardt*, 9 Abb. New Cases (N. Y.) 393.

² *Wolfe v. Matthews*, L. R. 21 Ch. Div. (1882) 194.

³ *Snow v. Wheeler*, 113 Mass. 179.

⁴ *Queen v. Registrar of Friendly Societies*, Law Rep. 7 Q. B. 741.

thought to have been in danger during a strike, which had been paid to the sheriff by the owner of the property, and to whom the sheriff assigned the bill, for the reason that there was no attack or threatened attack upon the property, the strikers not having disturbed it.¹

§ 35. Receivers—Contempt of Court.

A receiver appointed by a court of equity represents the court in the management of property which in law is considered in the possession of the court. The receiver also represents the court in employing, discharging and managing the employes necessary to care for and use the property placed in his hands for the purposes for which a receiver is appointed. The court, therefore, will hear and determine disagreements and controversies between a receiver and employes under him, and make such orders in respect thereto as right and justice may require.² The court may give advice to the receiver or employes, or both, and direct the receiver whom to discharge or employ, and arrange the terms of the contract.³

It is punishable as a contempt of court for employes of a railroad company, members of labor organizations, or any one else, to interfere with or molest by violence, or threatened violence, threats expressed or implied, or intimidation in any form, the receiver in the management of the road, with its rolling-stock or other property, or by said means, and by overawing by preconcerted demonstrations of force by assembling

¹ *People ex rel. Nichols v. Bd. Supervisors Queens Co.* 15 N. Y. Sup. 461.

² *Frank v. Denver & R. G. Ry. Co.*, 23 Fed. Rep. 757; *In re Doolittle* 43 Fed. Rep. 544; *Waterhouse v. Corner* (C. C.) 55 Fed. Rep. 149.

³ *Waterhouse v. Corner* (C. C.) 55 Fed. Rep. 149; *Frank et al v. Denver & R. G. Ry. Co.* (C. C.) 23 Fed. Rep. 757.

in large numbers, interfering with and molesting the employes in the discharge of their duties.¹ While as a general proposition, railroad like all other employes have the right to quit when they please if they have not entered into a contract for a specified time, yet in their case the proposition is subject to qualifications and exceptions, especially when considered in the light of the interstate commerce law. Under certain circumstances some classes of such employes may quit the service of a company to avoid obeying an order of court which they know has been made without being guilty of contempt. But the quitting must be actual and in good faith, and not pretended, as a trick to escape obeying the order. An injunction is binding on the employes of a road as well as upon the officers, whether they are made parties to the proceedings or not. Therefore, where, during a strike and boycott by a trade-union and railroads and their employes against a common carrier railroad having the right to transport over connecting roads interstate freight and passengers, a locomotive engineer (a member of the "Brotherhood of Locomotive Engineers," which organization was conducting the boycott, knowing or having the means of knowing that an injunction had been granted by the court restraining interference with or obstruction of interstate freight in the cars of the boycotted common carrier) refused to haul over the connecting road a car of the boycotted road loaded with interstate freight, until he received orders to do so from the "Brotherhood of Locomotive Engineers," was guilty of contempt of court. The engineer claimed that he was not liable for contempt,

¹ In re Doolittle, 23 Fed. Rep. 544; United States v. Berry et al, 24 Fed. Rep. 780; In re Wabash R. Co. 24 Fed. Rep. 217; United States v. Kane, 23 Fed. Rep. 748.

for the reason that he had quit the service of his company at the time of the alleged contempt. In reference to that the court said, "I cannot conceive of any principle of law under which such conduct can be justified. An engineer cannot be permitted to pretend to quit the service of his company in the manner stated, with his train on the main track ten miles from his destination, and for the evident purpose of evading an order of court which was equally in force against employer and employe. If such an abandonment of service could be excused in law it would leave this great corporation, operating 1,500 miles of railway, and moving several hundred trains of cars per day, at the mercy of its employes, and subject the public with its multitude of interests and rights to irremediable injuries and losses. Upon the facts of the case made against engineer James Lennon I find that he did not quit the service of the company in fact, and did not intend to do so, and that his pretense to do so was a trick to evade the order of the court. Being in the service of the company when he refused to switch the Ann Arbor car into the train at Alexis, and having then full knowledge of the terms and meaning of the order of court, that order was then in full force and commanded him to do the very thing he refused to do. He, therefore, deliberately and knowingly violated the mandate of the court and was guilty of contempt."¹ Contempt being a criminal offense, a United

¹ Toledo A. A. & N. M. Ry. Co. v. Pa. Co., 54 Fed. Rep. 746, 730.

Lennon was committed to the custody of the United States marshal for failure to pay the fine assessed against him for contempt. He sued out a writ of *habeas corpus* in the United States Circuit Court for the Northern District of Ohio, the decision of which was adverse to him. From that decision he appealed to the Supreme Court of the United States. The Circuit Court certified to the Supreme Court for its decision the following points:—

- i. Is the suit in which the order was made one arising under the

States court has not jurisdiction over it out of the district where it was committed.¹

constitution or laws of the United States?

2. Did the court have jurisdiction of the person of the petitioner by reason of his having had sufficient notice of the proceedings and orders set out in the petition?

3. Was it beyond the jurisdiction of a court of equity to issue the orders made in said case?

November 27, 1893, the Supreme Court, by Chief Justice Fuller, declined to interfere on the ground that the court did not have jurisdiction, and the appeal was dismissed.

It is a well-known rule that an appeal will not lie from the order of a court assessing punishment for contempt. The appeal in this case was not from such order, but from a refusal of the court making it to entertain a petition of *habeas corpus* based on the ground that the court did not have constitutional authority and jurisdiction to render such decision. When the cobwebs are brushed away it looks like a ruse to escape the rule of law inhibiting an appeal from a judgment for contempt. The petitioner denying the jurisdiction of the court to order him into the custody of the marshal for refusing to pay a fine of fifty dollars, admits, by filing his petition in that same court, its jurisdiction to issue a writ of *habeas corpus*, and asks the court to pass judgment on the validity of its own acts; having assumed the jurisdiction forced upon it, and having rendered a decision as it certainly must have been expected would have been done, appealed from that decision. On this phase of the case the Supreme Court of the United States says that the jurisdiction invoked by the petitioner to discharge him from custody carried with it the jurisdiction to remand as well as discharge, or the power to hear and determine whether he was lawfully held in custody.

On the question of appeal the court bases its judgment on the precedent of *Cross v. Burke*, 146 U. S., 82, a case of homicide arising in the District of Columbia, in which a careful examination was made of the various statutes relating to appeals from judgments of Circuit Courts on *habeas corpus*. *Held*, that the case did not come within any of the classes of cases in section 5 of the act of Congress of March 3, 1891, in which appeals may be taken, and particularly in that class "in which the jurisdiction of the court is in issue; in such case the question of jurisdiction alone shall be certified from the court below to the Supreme Court for decision." That neither could the case be brought within the class of cases in which the construction of the Constitution is involved, or that the petitioner was deprived of his liberty without due process of law.

Ex parte Lennon, October Term, 1893.

¹ *Frank v. Denver & R. G. Ry. Co.*, 23 Fed. Rep. 757.

CHAPTER X.

DELAYS—TRANSPORTATION—BUILDING—SHERIFF'S EXPENSES.

- § 36. Liability of railroads for.
- 37. Liability in case of vessels.
- 38. Liability of contractor for delay in building.
- 39. Liability for sheriff's expenses in protecting property during a strike.

§ 36. Liability of Railroads For.

Following the common law, that a common carrier is liable for loss or damage to property entrusted to it for transportation whether arising from the fault of its employes or not, it was decided in New York in 1859 that a railroad company was liable for the damages to a cargo of potatoes arising from delay in reaching the place of its destination caused by a strike of the engineers of the company, without the slightest fault on the part of its officers.¹ The same rule would have been applied in a later case had not the liability of the carrier been limited in the contract by exemption from delay from strikes.² In Missouri, in 1875, in a case similar to that of *Blackstock v. The N. Y. & Erie R. Co.*, it was held that the railroad company was liable notwithstanding the fact that it was stipulated in the bill of lading that the potatoes were to be shipped at the owner's risk of freezing. That while a railroad company may by special contract limit its common law liability, yet it cannot exempt itself from the

¹ *Blackstock v. N. Y. & Erie R. Co.*, 20 N. Y. 48.

² *Del., L. & W. R. R. Co. v. Bowns et al*, 58 N. Y. 573.

consequences of its negligence, and that the sudden refusal of its employes to work will not excuse a railroad company for failure to transport freight in the usual time.¹ This doctrine is held in Colorado.² But in New York, in 1887, in an action against a railroad company for damages to hogs and cattle caused by delay in shipment resulting from a strike of former employes, it was held that the company was not liable.³ The acts of the strikers were such that it was utterly impossible for trains to be run until the strike ceased. It was held that when the strikers quit the service of the railroad company they ceased to be its employes for whose acts it would be responsible. That the fact that the strike was organized while they were in the employ of the company made no difference, for the conspiracy was outside of their employment and did not impose any liability upon the company. The same doctrine was laid down in Illinois,⁴ Indiana,⁵ Pennsylvania,⁶ and Texas.⁷ In these states are the great railroad systems of the United States, and the decisions in them may be said to settle the general rule of law as to the liability of railroad common carriers for delay

¹ *Read v. St. Louis, Kan. City & Northern R. Co.*, 60 Mo. 199.

² *Lewis v. Ludwick*, 6 Colo. 368; 98 Am. Dec. 54.

³ *Geisner v. Lake Shore & Michigan Southern R. Co.*, 102 N. Y. 563; 55 Am. Rep. 837.

⁴ *Indpls. & St. Louis R. Co. v. Juntgen*, 10 Bradwell, (Ill.) 295; *Pitts. Ft. Wayne & Chicago R. Co. v. Hazen*, 84 Ill. 36; 25 Am. Rep. 422.

⁵ *Pitts. Cin. & St. Louis Ry. Co. v. Hollowell*, 65 Ind. 188; 32 Am. Rep. 63; *Bartlett v. Pitts. Cin. & St. Louis R. Co.*, 94 Ind. 281; 18 Am. and Eng. R. R. Cases, 549; *Lake Shore & Mich. So. R. Co. v. Bennett*, 89 Ind. 457; 6 Am. and Eng. R. R. Cases, 391.

⁶ *Sherman, Hall & Co. v. Pa. R. Co.*, 3 Am. and Eng. R. R. Cases, 274 (U. S. C. C.); *Wertheimer v. Pa. R. Co.*, 3 Am. and Eng. R. R. Cases, 279; 17 Blatchf. (U. S. C. C.) 421.

⁷ *Gulf, Colo. & Santa Fe R. Co. v. Levi*, 76 Texas, 337; 18 Am. St. Rep. 45. See *Hass v. Kan. City & F. S. G. R. Co.*, 7 So. East. Rep. 629.

in transporting merchandise when caused by strikes. The only exception to the common law made as to the liability of a common carrier was in the case of an act of God or the king's enemies.¹ In the cases just cited the strikers were so numerous and their acts so violent that not only the railroad companies and civil authorities were unable to control the mobs, but frequently the militia of the states was unable to do so. Therefore the strikers could well be considered public enemies, and brought the companies within the common law exception, "the king's enemies." The strikers were no longer employes. By the act of striking they took themselves out of the service of their employers. From the vindictive manner in which the strikes were conducted, and the great losses sustained by the companies, there could be no suspicion of collusion between the strikers and the railroad companies. The weight of authority is, that a railroad company is not liable for loss or damage caused by delay in transporting property entrusted to it when such delay is caused by striking former employes of the road who conduct the strike so violently and tumultuously as not only to put it out of the power of the company to control and manage its property and run its trains, but also overawe and overpower the civil and military authorities.

But there can be no question that the strikers are individually and collectively liable.

§ 37. Liability in Case of Vessels.

Where a charter-party provided that a certain vessel should proceed to a port in the Azof sea, where it should be loaded with a cargo of wheat, and then

¹ *Forward v. Pittard*, 1 Durnford & East, 27.

proceed to a port of discharge in England, and that the freighter's liability should cease when the cargo was shipped, the owner or his agent having an absolute lien on the cargo for freight, dead-freight, demurrage and lighterage at the port of discharge; and that a bill of lading known as the 1885 should be used under the charter and its condition form part thereof; the master signing bills of lading as prescribed in the charter, but containing no reference to the charter nor any clause which would relieve the consignees from loss to the ship occasioned by strikes, but providing that the goods were to be applied for within twenty-four hours after the ship's arrival, otherwise the master was to be at liberty to land the cargo in lighters at the risk and expense of the owners; the vessel arrived in London August 14th, and the consignees duly demanded the cargo, but did not send barges to receive it until the 16th, when the unloading proceeded with reasonable dispatch until the 20th, when the dock laborers struck; the strike extended next to the lightermen, and on the 23rd of August became general and lasted until September 16th; after that date the unloading being completed. It was held in an action by the shipowner against the charterers and consignees for demurrage and damage for the detention of the vessel, that the liability of the freighters ceased on the arrival of the vessel at the port of discharge; that although the consignees were bound to discharge within a reasonable time, they had done all that they could do under the circumstances, and the maxim *lex non cogit ad impossibilia* applied; that reasonable time meant reasonable in ordinary circumstances, not in extraordinary ones beyond the control of the consignees;

and that as the delay was not caused by them or their agents or servants they were not liable.¹

But where a cargo was shipped under a bill of lading incorporating a clause in the charter-party which fixed the number of lay days for unloading and allowed time for demurrage, but neither the bill of lading nor charter-party contained any exception as to strikes; and by the custom of the port of discharge a cargo such as that to be unloaded was discharged by the joint act of the shipowner and the consignees; that during the lay days a strike took place both among the laborers employed on behalf of the ship and those employed by the consignees, with the result of stopping the unloading which could not be resumed until some time after the expiration of the lay days fixed in the charter-party; held that as the number of lay days were fixed, the consignees were liable to pay demurrage, notwithstanding the inability of the shipowners, owing to the strike, to do their part of the unloading.² The charterers were not liable to the shipowners for delay in discharging freight occasioned by a strike of the dock laborers, where by the terms of the charter-party the cargo was "to be discharged with all dispatch as customary, and ten days on demurrage over and above the said lay days at 6d. per net register ton per day," the custom of the port of discharge being that the dock company undertook the work of discharging cargo. It was held that the effect of the charter-party was not to fix any definite time within which the cargo must be discharged, but to provide that it should be discharged with all reasonable dispatch, having regard to the circum-

¹ Hicks v. Rodocanachi, 2 Q. B. D., (1891) 626; Law Times Rep., (N. S.) 300; 4 Alb. Law J., 462.

² Budgett & Co. v. Binnington & Co., L. R. Q. B., (1891) 35.

stances and the manner of discharging cargo customary at the port of discharge.¹

§ 38. Liability of Contractor for Delay in Building.

A building contract provided for ten dollars damages per day for delay in the completion of the work after a certain day, if it should "arise from any default on the part" of the contractor, delay from strikes being excepted. The sub-contractor for the woodwork made a like agreement with the contractor, and gave him a bond for the strict performance of his agreement. There was a delay of one hundred and thirty days in the mason work on which the woodwork was dependent, for which the sub-contractor was not responsible. Within that time the owner availed himself of a provision of the contract that, if sufficient material or workmen were not supplied he might finish the work and deduct the expense; the work was done and completed by him and the building occupied forty days after the expiration of the delay of one hundred days. The sub-contractor was delayed two or three weeks by a strike, four or five days by delay of the owner in making a decision in regard to certain specified work, thirty days by plumbers working under contract with the owner, and did extra work amounting to two hundred and sixty dollars, the time occupied in which did not appear; held, these facts relieved the subcontractor from responsibility for the delay during the last forty days.²

§ 39. Liability for Sheriff's Expenses in Protecting Property during a Strike.

In Pennsylvania a strike against the works of the

¹ Castlegate Steamship Co., Limited v. Dempsey, (1892) 1 Q. B., 854, 54.

² Gutman v. Crouch, 31 N. E. Rep., 275; See Crouch v. Gutman, 31 N. E. Rep., 271.

Allegheny Bessemer Steel Company grew so serious that the proprietors were obliged to call upon the sheriff to protect their property and employes, they agreeing to reimburse him for his expenses in so doing. The ordinary *posse comitatus* was not sufficient for the purpose, and he was obliged to swear in some special deputies. He necessarily incurred considerable expense in arming and subsisting and paying them. The doctrine that an agreement of a private person to pay a public officer for performing his duty is void on the ground that public policy applies only to the payment of his salary,¹ and not to extraordinary expenses incurred not strictly in the line of his official duty. It is the duty of a sheriff to preserve the public peace and protect property from injury or destruction by a mob of strikers, but he is only obliged to do so in the way provided by law. That way is to call out the power of the county. In that he is absolute master, and it is for him to command and the citizens to obey. But the *posse* is intended only for short or temporary service, and it was not in the contemplation of the law that it should serve for the length of time required in this case. While it is not the sheriff's official duty to employ and pay the expenses of special deputies, yet such employment is not unlawful and he has the right to avail himself of paid deputies on terms which do not involve anything in the shape of compensation for his own services or those of his regularly appointed deputies. In such a case a sheriff can recover for the actual expenses in arming, subsisting and paying the per diem of special deputies, but nothing more.²

¹ Greenhood on Pub. Policy, 328, Rule 277.

² McCandless v. Allegheny Bessemer Steel Co., 23 Pitts Legal Journal, 223.

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